MISSISSIPPI CODE 1972
Annotated

Banks and Financial Institutions

Title 81

TABLE OF CONTENTS

VOLUME 18A

TITLE 81

BANKS AND FINANCIAL INSTITUTIONS

CHAP.		BEGINNING SECTION
1.	Department of Banking and Consumer Finance	81-1-1
3.	Incorporation and Organization of Banks	81-3-1
5.	General Provisions Relating to Banks and Banking	81-5-1
7.	Branch Banks	81-7-1
8.	Regional Banking Institutions	81-8-1
9.	Insolvent Banks	81-9-1
11.	Savings and Loan Associations [Repealed]	81-11-1
12.	Savings Associations Law	81-12-1
13.	Credit Unions	81-13-1
14.	Savings Bank Law	81-14-1
15.	Agricultural Credit Corporations	81-15-1
17.	Farmers' Credit Associations	81-17-1
18.	Mississippi Mortgage Consumer Protection Law	81-18-1
19.	Consumer Loan Broker Act	81-19-1
20.	Consumer Complaints and Disputes Against Mortgage Companies	81-20-1
21.	Insurance Premium Finance Companies	81-21-1
23.	Interstate Bank Branching	81-23-1
25.	The Mississippi International Banking Act	81-25-1
27.	Multistate, State and Limited Liability Trust Institutions	81-27-1.001
29.	Lender Trade Name and Trademark Use	81-29-1

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MISSISSIPPI CODE

1972

ANNOTATED

ADOPTED AS THE OFFICIAL CODE OF THE
STATE OF MISSISSIPPI
BY THE
1972 SESSION OF THE LEGISLATURE

VOLUME EIGHTEEN A

BANKS AND FINANCIAL INSTITUTIONS

§§ 81-1-1 to 81-29-3

CONTAINING PERMANENT PUBLIC STATUTES OF MISSISSIPPI
TO THE END OF THE 2015 REGULAR LEGISLATIVE SESSION

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4452711

ISBN 978-1-63282-112-6 (Volume 18A)
ISBN 978-0-327-09628-3 (Code set)

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701 E. Water St., Charlottesville, VA 22902-5389

www.lexis.nexis.com

(Pub.44510)

PREFACE

The Mississippi Code of 1972, which became effective on November 1, 1973, is the culmination of nearly four years of effort on the part of the Legislature, the Attorney General's office and the publishers, which brings together provisions of general statutory law having a common subject matter into a more orderly and logical framework of code titles and chapters, and employing a modern and effective section numbering system. A major by-product of the code revision will be the state-owned magnetic computer tape containing the Mississippi Code of 1972, which will be of invaluable assistance to the Legislature and to the state.

The enabling act for the code was a recommendation of the Mississippi State Bar, which resulted in the consideration and passage of Senate Bill 1964, Chapter 465, Laws of 1970, signed into law by Governor John Bell Williams.

The Code Committee provided for in that act was comprised of A. F. Summer, Attorney General, Heber Ladner, Secretary of State, Representative Edgar J. Stephens, Jr., Chairman, House Appropriations Committee, Senator William G. Burgin, Jr., Chairman, Senate Appropriations Committee, Representative H. L. Meredith, Jr., Chairman, House Judiciary "A" and Judiciary en banc Committees, Senator E. K. Collins, Chairman, Senate Judiciary "A" and Judiciary en banc Committees, Representative Ney McKinley Gore, Jr., Chairman, House Judiciary "B" Committee, and Senator William E. Alexander, Chairman, Senate Judiciary "B" Committee. In 1972, Representative Marby Robert Penton and Senator Herman B. Decell, Chairman of House and Senate Judiciary "B" Committees, respectively, became members of the Committee, replacing Representative Gore and Senator Collins, Senator Alexander having been appointed Chairman of Senate Judiciary "A" and Judiciary en banc Committees. The Deputy Attorney General, Delos H. Burks, served the Code Committee as Secretary. Special Assistant Attorney General Fred J. Lotterhos, under the supervision of the Attorney General, was assigned the principal responsibility for the supervision of the recodification, including the consideration and treatment of some 16,000 sections of code manuscript.

Final legislative approval was given to the Mississippi Code of 1972 by passage of Senate Bill 2034, Laws of 1972, which was signed by Governor William L. Waller on April 26, 1972.

The Code Committee is of the opinion that the recodification has been thoroughly and well accomplished, and will result in a greatly improved repository of the general statutory law of the state.

A. F. Summer
Attorney General

PUBLISHER'S FOREWORD

This 2015 Replacement Volume 18A of the Mississippi Code of 1972 Annotated represents material appearing in the original 1973 bound volume, the 1996 Replacement Volume 18, and the 2001 Replacement Volume 18A, as well as reflecting amendments, repeals, and new Code provisions enacted by the Mississippi Legislature through the 2015 Regular Legislative Session.

This volume contains the full text of Title 81, of the Mississippi Code of 1972 Annotated, as amended through the 2015 Regular Legislative Session.

Case annotations are included based on decisions of the State and federal courts in cases arising in Mississippi. Many of these cases were decided under the former statutes in effect prior to the enactment of the Code of 1972. These earlier cases have been moved to pertinent sections of the Code where they may be useful in interpreting the current statutes. Annotations to collateral research references are also included.

To better serve our customers by making our annotations more current, LexisNexis has changed the sources that are read to create annotations for this publication. Rather than waiting for cases to appear in printed reporters, we now read court decisions as they are released by the courts. A consequence of this more current reading of cases, as they are posted online on LexisNexis, is that the most recent cases annotated may not yet have print reporter citations. These will be provided, as they become available, through later publications.

This publication contains annotations taken from decisions of the Mississippi Supreme Court and the Court of Appeals and decisions of the appropriate federal courts decisions. These cases will be printed in the following reporters:

Southern Reporter, 3rd Series
United States Supreme Court Reports
Supreme Court Reporter
United States Supreme Court Reports, Lawyers' Edition, 2nd Series
Federal Reporter, 3rd Series
Federal Supplement, 2nd Series
Federal Rules Decisions
Bankruptcy Reporter

Additionally, annotations have been taken from the following sources:

American Law Reports, 6th Series:
American Law Reports, Federal Series:
Mississippi College Law Review:
Mississippi Law Journal:

Finally, published Opinions of the Attorney General and opinions of the Ethics Commission have been examined for annotations.

A comprehensive Index appears at the end of this volume.

Visit the LexisNexis website at http://www.lexisnexis.com for an online bookstore, technical support, customer support, and other company information.

For further information or assistance, please call us toll-free at (800) 833-9844, fax us toll-free at (800) 643-1280, e-mail us at customer.support@bender.com, or write to: Mississippi Code Editor, LexisNexis, 701 E. Water St., Charlottesville, VA 22902-5389.

September 2015 LexisNexis

User's Guide

This guide is designed to help both the lawyer and the layperson get the most out of the Mississippi Code of 1972 Annotated. Information about key features of the Code and suggestions for its more effective use are given under the following headings:

— Advance Code Service
— Advance Sheets
— Amendment Notes
— Analyses
— Attorney General Opinions
— Code Status
— Comparable Legislation from other States
— Court Rules
— Cross References
— Editor's Notes
— Effective Dates
— Federal Aspects
— Index
— Joint Legislative Committee Notes
— Judicial Decisions
— Organization and Numbering System
— Placement of Notes
— Replacement Volumes
— Research and Practice References
— Source Notes
— Statute Headings
— Tables

If you have a question not addressed by the User's Guide, or comments about your Code service, you may contact us by calling us toll-free at (800) 833-9844, faxing us toll-free at (800) 643-1280, e-mailing us at customer.support@bender.com, or writing to Mississippi Code Editor, LexisNexis, 701 E Water Street, Charlottesville, VA 22902-5389.

ADVANCE CODE SERVICE

Three times a year, at roughly quarterly intervals between delivery of Code supplement pocket parts, we publish the Mississippi Advance Code Service pamphlets. These pamphlets contain updated statutory material and annotations to Attorney General opinions, research and practice references, and recent court decisions construing the Code. Each pamphlet is cumulative, so that each is a "one-stop" source of case notes updating those in your Code bound volumes and pocket parts.

ADVANCE SHEETS

The Advance Sheets consist of a series of pamphlets issued in the spring. The series reproduces the acts passed by the Mississippi Legislature and approved by the Governor during the legislative session. Features include tables showing the impact of legislation on sections of the Mississippi Code of 1972 Annotated, and a cumulative index. These pamphlets enable the user to receive a preview of approved legislation prior to supplement availability, and serve as an excellent source of legislative history.

AMENDMENT NOTES

Every time a Code provision is amended, we prepare a note describing the effect of the amendment. By reading the note, you can ascertain the impact of the change without having to check the former statute itself.

Amendment notes are retained in the Supplement until the bound volume is replaced, at which time notes from all but the last two years are deleted.

Amendment notes are available online from 1991 until the present in the Mississippi Legislative Archive.

ANALYSES

Each title, chapter, and article appearing in a bound volume or supplement is preceded by an analysis. The analysis details the scope of the title, chapter, and article and enables you to see at a glance the content of the title, chapter, and article without resorting to a page-by-page examination in the bound volume or supplement.

ATTORNEY GENERAL OPINIONS

Opinions of the Attorney General for the State of Mississippi have been read for constructions of Mississippi law. Notes describing the subject matter of the opinions have been placed under relevant Code provisions under the heading "Attorney General Opinions." The citation at the end of each note refers to the person requesting the opinion, the date of the opinion, and the opinion number.

CODE STATUS

The Mississippi Code of 1972 Annotated is Mississippi's official code and is considered evidence of the statute law of the State of Mississippi (see § 1-1-8). The Code was enacted by Chapter 394 of the Laws of 1972, which was signed by the Governor on April 26, 1972.

Title 1, Chapters 1 through 5 of the Code contain statutes governing the status and construction of the Code.

COMPARABLE LEGISLATION FROM OTHER STATES

Notes to comparable legislation from other states appear for uniform laws, interstate compacts, statutory provisions pertaining to reciprocity and cooperation with other states, and various important statutes of general interest. Other states' statutes that are similar in subject matter and scope to those of Mississippi are cited, generally, under the first section of the chapter or article to which they pertain. Occasionally, comparable legislation pertains to only one section, in which case it is cited under that section rather than at the chapter or article level.

See also *Federal Aspects*.

COURT RULES

The Mississippi Court Rules are published separately by LexisNexis in a fully annotated softcover volume which is replaced annually and supplemented semi-annually.

The Court Rules volume contains statewide rules of procedure of the state courts, the local rules of the United States district courts and bankruptcy courts for Mississippi, and the rules of the United States Court of Appeals for the Fifth Circuit. Rules are received from the courts and edited only for stylistic consistency. For further information, see the Preface to the Mississippi Court Rules volume.

CROSS REFERENCES

Cross references refer you to notes under other Code sections, that may affect a law or place it in context. Cross references also are used under repealed provisions to refer you to an existing law on a similar subject. Cross references do not cite all related statutes, however, since these can be identified by using the General Index.

See also *Comparable Legislation from other States* and *Federal Aspects*.

EDITOR'S NOTES

Editor's notes are notes prepared by the Publisher that contain information about important or unusual features of a law, or special circumstances surrounding passage of the law, that are not apparent from the law's text.

See also *Effective Dates*.

EFFECTIVE DATES

Absent a specific effective date provision within an act, Mississippi laws generally take effect upon approval date, which is the date the act is signed into law by the Governor.

FEDERAL ASPECTS

Notes to federal legislation that is similar in subject matter and scope to the laws of Mississippi are referenced throughout the Code. In addition, the

Code contains the United States Code Service citation for any federal law that is referred to in a Mississippi statute by its popular name or by its session law designation.

See also *Comparable Legislation from other States.*

INDEX

The Code is completely indexed in two softcover Index volumes, which are updated and replaced annually. In addition, each volume of the Code is followed by its own index. As accurate and thorough as the Index is, your best defense against index wild goose chases is familiarity with indexing techniques. To that end, an explanatory Foreword to the Index appears in the first Index volume.

JOINT LEGISLATIVE COMMITTEE NOTES

Joint Legislative Committee notes are included in the Code to describe codification decisions made by the Mississippi Joint Legislative Committee on Compilation, Revision and Publication of Legislation. Examples of Committee actions that warrant the inclusion of a note are the integration of multiple amendments to a single Code section during the same legislative session, and the correction of typographical errors appearing in the Code.

JUDICIAL DECISIONS

Every reported case from the Supreme Court of Mississippi, the Court of Appeals of Mississippi, federal district courts for Mississippi, the federal Fifth Circuit Court of Appeals and the United States Supreme Court has been read for constructions of Mississippi law. These constructions are noted under pertinent sections of the statutes or Mississippi Constitution provisions, under the heading "Judicial Decisions." Where a decision has been reviewed by a higher court, subsequent judicial history and disposition is noted in the case note if such disposition has any bearing on the annotated material. Where two or more decisions state the same rule of law, the case citations are cumulated under one case note.

Case notes are grouped together under headings called "catchlines." The catchlines identify the basic subject matter of the case notes and assist the user in locating pertinent notes. Catchlines are numbered and arranged thematically, with "In general" first. Where there are two or more catchlines, an analysis, listing all the catchlines, precedes the annotations.

Frequently, statutes carry notes to cases that arose under earlier laws on the same subject. Case notes are retained so long as the editor believes the note will have some relevance under current law, though of course the relevance may be diminished by later changes in the law. These case notes appear under the heading "Decisions under former law."

ORGANIZATION AND NUMBERING SYSTEM

The Code is organized by titles, chapters, articles, subarticles, undesignated centered headings and sections. Analyses at the beginning of each title, chapter, article, and subarticle help you understand the internal arrangement of each Code unit (see *Analyses*).

Odd numbers are generally used for the numbering of titles, chapters and sections. Even numbers have been used for some chapters and sections so that a particular new chapter or section might be logically placed with other chapters and sections dealing with the same or similar subject matter. Similarly, the use of numbers with decimal points has been used for some sections in order that they may be inserted among other sections pertaining to the same subject.

The title, chapter, and section for each Code section is revealed by its section number. Thus, in the designation "§ 1-3-65," the first digit ("1") means the provision is in Title 1 ("Laws and Statutes"); the second ("3") indicates Chapter 3 ("Construction of Statutes"); and the last two digits ("65") mean the 65th section in that chapter ("Construction of terms generally").

Articles and subarticles are not reflected by section number designations.

Within sections, subsections and paragraphs usually are designated following this pattern: (1)(a)(i)1. or (1)(a)(i)A. A distinctive indention scheme is applied to suggest the relative value of each unit within this hierarchy.

PLACEMENT OF NOTES

Where a note pertains to a single statute section, it will of course be set out following that section. In many instances, however, a note applies equally to several statute sections or to an entire chapter or article. If the pertinent sections are scattered, or few in number, the note will be duplicated for each section. But where the note applies to all or most of the sections in a chapter or article, we prevent the space-consuming repetition of notes by placing the note at the very beginning of the chapter or article.

REPLACEMENT VOLUMES

The Code is periodically updated and streamlined by the replacement of volumes. Although a current set of the Code contains all currently applicable statutes, we encourage you to retain replaced volumes and their supplement pockets parts for historical reference.

RESEARCH AND PRACTICE REFERENCES

Citations to references in American Jurisprudence, American Jurisprudence Pleading and Practice, American Jurisprudence Proof of Facts, American Jurisprudence Trials, American Law Reports, First through Sixth Series, ALR Federal, Corpus Juris Secundum, various other treatises and practice guides, and Mississippi law journals are given under this heading, wherever the references appear to discuss the statute under which the citation appears, or a topic related to the statute. These citations are intended only to give you a starting point for your library research. The Mississippi law journals include Mississippi Law Journal and Mississippi College Law Review.

SOURCE NOTES

Each section of the Code is followed by a brief note showing the acts of the Legislature on which it is based, including the act that originally enacted the section and any subsequent amendments.

The source note follows the section text, preceding any other annotations for the section. Information in the source note is listed in chronological order, with the most recent information listed last. If a section has been renumbered, the former number will appear in the source note.

The tables volume should also be consulted when researching the history of a statutory section, since it contains cross reference tables that provide a statutory citation for each section of the session laws and the date each act went into effect.

STATUTE HEADINGS

Headings or "catchlines" for Code sections and subsections are generally created and maintained by the publisher. They are mere catchwords and are not to be deemed or taken as the official title of a section or as a part of the section. Your suggestions for the improvement of particular catchlines are invited.

TABLES

The Mississippi Code of 1972 Annotated contains several tables that can assist you in your research. These are published in the Statutory Tables volume of the Code, and include the following:

- Sections of the Code of 1930 carried into the Code of 1942.
- Sections of the Code of 1942 carried into the Code of 1972.
- Allocation of Acts of Legislature, 1931 — 1972.
- Allocation of Acts of Legislature, 1972 — present.
- Consolidated Tables of amendments and repeals of 1942 Code sections.
- Consolidated Tables of amendments and repeals of 1972 Code sections.

GENERAL OUTLINE OF TITLES AND CHAPTERS

CONSTITUTION OF THE UNITED STATES ... Volume 1
CONSTITUTION OF MISSISSIPPI ... Volume 1

TITLE 1. LAWS AND STATUTES

Beginning Section
CHAPTER 1. Code of 1972 ... 1-1-1
3. Construction of Statutes ... 1-3-1
5. Session Laws and Journals ... 1-5-1

TITLE 3. STATE SOVEREIGNTY, JURISDICTION AND HOLIDAYS

CHAPTER 1. State Sovereignty Commission [Repealed] ... 3-1-1
3. State Boundaries, Holidays, and State Emblems 3-3-1
5. Acquisition of Land by United States Government ... 3-5-1
7. Compact for a Balanced Budget ... 3-7-1

TITLE 5. LEGISLATIVE DEPARTMENT

CHAPTER 1. Legislature ... 5-1-1
3. Legislative Committees ... 5-3-1
5. Interstate Cooperation ... 5-5-1
7. Lobbying [Repealed] ... 5-7-1
8. Lobbying Law Reform Act of 1994 ... 5-8-1
9. Agency Review ... 5-9-1
11. Abolishment of Agencies ... 5-11-1

TITLE 7. EXECUTIVE DEPARTMENT

CHAPTER 1. Governor ... 7-1-1
3. Secretary of State ... 7-3-1
5. Attorney General ... 7-5-1
7. State Fiscal Officer; Department of Audit ... 7-7-1
9. State Treasurer ... 7-9-1
11. Secretary of State; Land Records ... 7-11-1
13. Mississippi Administrative Reorganization Act 7-13-1
15. Executive Branch Reorganization Study Commission [Repealed] ... 7-15-1
17. Mississippi Executive Reorganization Act of 1989 ... 7-17-1

TITLE 9. COURTS

Beginning Section

CHAPTER 1. Provisions Common to Courts 9-1-1
3. Supreme Court 9-3-1
4. Court of Appeals of the State of Mississippi 9-4-1
5. Chancery Courts 9-5-1
7. Circuit Courts 9-7-1
9. County Courts 9-9-1
11. Justice Courts 9-11-1
13. Court Reporters and Court Reporting 9-13-1
15. Judicial Council [Repealed] 9-15-1
17. Court Administrators 9-17-1
19. Commission on Judicial Performance 9-19-1
21. Administrative Office of Courts 9-21-1
23. Drug Courts 9-23-1
25. Veterans Treatment Courts 9-25-1

TITLE 11. CIVIL PRACTICE AND PROCEDURE

CHAPTER 1. Practice and Procedure Provisions Common to Courts 11-1-1
3. Practice and Procedure in Supreme Court 11-3-1
5. Practice and Procedure in Chancery Courts 11-5-1
7. Practice and Procedure in Circuit Courts 11-7-1
9. Practice and Procedure in County Courts and Justice Courts 11-9-1
11. Venue of Actions 11-11-1
13. Injunctions 11-13-1
15. Arbitration and Award 11-15-1
17. Suits to Confirm Title or Interest and to Remove Clouds on Title 11-17-1
19. Ejectment 11-19-1
21. Partition of Property 11-21-1
23. Trial of Right of Property 11-23-1
25. Unlawful Entry and Detainer 11-25-1
27. Eminent Domain 11-27-1
29. Sequestration 11-29-1
31. Attachment in Chancery Against Nonresident, Absent or Absconding Debtors 11-31-1
33. Attachment at Law Against Debtors 11-33-1
35. Garnishment 11-35-1
37. Replevin 11-37-1
38. Claim and Delivery 11-38-1
39. Quo Warranto 11-39-1
41. Mandamus; Prohibition 11-41-1

TITLE 11. CIVIL PRACTICE AND PROCEDURE (Cont'd)

Beginning Section

43. Habeas Corpus 11-43-1
44. Compensation to Victims of Wrongful Conviction and Imprisonment 11-44-1
45. Suits by and Against the State or Its Political Subdivisions 11-45-1
46. Immunity of State and Political Subdivisions From Liability and Suit for Torts and Torts of Employees 11-46-1
47. Lis Pendens 11-47-1
49. Rights and Duties of Attorneys, Generally 11-49-1
51. Appeals 11-51-1
53. Costs 11-53-1
55. Litigation Accountability Act of 1988 11-55-1
57. Structured Settlements 11-57-1
59. Uniform Interstate Depositions and Discovery Act 11-59-1
61. Mississippi Religious Freedom Restoration Act 11-61-1
63. Application of Foreign Law 11-63-1

TITLE 13. EVIDENCE, PROCESS AND JURIES

Chapter 1. Evidence 13-1-1
3. Process, Notice, and Publication 13-3-1
5. Juries 13-5-1
7. State Grand Jury Act 13-7-1

TITLE 15. LIMITATIONS OF ACTIONS AND PREVENTION OF FRAUDS

Chapter 1. Limitation of Actions 15-1-1
3. Prevention of Frauds 15-3-1

TITLE 17. LOCAL GOVERNMENT; PROVISIONS COMMON TO COUNTIES AND MUNICIPALITIES

Chapter 1. Zoning, Planning and Subdivision Regulation .. 17-1-1
2. Building Codes 17-2-1
3. Promotion of Trade, Conventions and Tourism 17-3-1
5. Jails, Waterworks and Other Improvements 17-5-1
7. Removal of Local Governments in Emergencies 17-7-1
9. Lease of Mineral Lands other than Sixteenth Section or "In Lieu" Lands 17-9-1
11. Gulf Regional District Law 17-11-1
13. Interlocal Cooperation of Governmental Units 17-13-1

TITLE 17. LOCAL GOVERNMENT; PROVISIONS COMMON TO COUNTIES AND MUNICIPALITIES (Cont'd)

Beginning Section
15. Human Resource Agencies 17-15-1
17. Solid Wastes Disposal 17-17-1
18. Mississippi Hazardous Waste Facility Siting Act of 1990 17-18-1
19. Appropriations to Planning and Development Districts 17-19-1
21. Finance and Taxation 17-21-1
23. Rural Fire Truck Acquisition Assistance Programs 17-23-1
25. General Provisions Relating to Counties and Municipalities 17-25-1
27. Municipal Historical Hamlet Act 17-27-1
29. Mississippi Entertainment District Act 17-29-1

TITLE 19. COUNTIES AND COUNTY OFFICERS

CHAPTER 1. County Boundaries 19-1-1
2. County Government Reorganization Act 19-2-1
3. Board of Supervisors 19-3-1
4. County Administrator 19-4-1
5. Health, Safety and Public Welfare 19-5-1
7. Property and Facilities 19-7-1
9. Finance and Taxation 19-9-1
11. County Budget 19-11-1
13. Contracts, Claims and Transaction of Business with Counties 19-13-1
15. Records and Recording 19-15-1
17. County Auditors 19-17-1
19. Constables 19-19-1
21. Coroners 19-21-1
23. County Attorneys 19-23-1
25. Sheriffs 19-25-1
27. Surveyors and Surveys 19-27-1
29. Local and Regional Railroad Authorities 19-29-1
31. Public Improvement Districts 19-31-1

TITLE 21. MUNICIPALITIES

CHAPTER 1. Classification, Creation, Abolition, and Expansion 21-1-1
3. Code Charters 21-3-1
5. Commission Form of Government 21-5-1
7. Council Form of Government 21-7-1

TITLE 21. MUNICIPALITIES (Cont'd)

Beginning Section
8. Mayor-Council Form of Government 21-8-1
9. Council-Manager Plan of Government 21-9-1
11. Municipal Elections [Repealed] 21-11-1
13. Ordinances 21-13-1
15. Officers and Records 21-15-1
17. General Powers 21-17-1
19. Health, Safety, and Welfare 21-19-1
21. Police and Police Departments 21-21-1
23. Municipal Courts 21-23-1
25. Fire Departments and Fire Districts 21-25-1
27. Public Utilities and Transportation 21-27-1
29. Employees' Retirement and Disability Systems 21-29-1
31. Civil Service 21-31-1
33. Taxation and Finance 21-33-1
35. Municipal Budget 21-35-1
37. Streets, Parks and Other Public Property 21-37-1
38. Acquisition or Lease of Real Property from Federal Government for Parks, Recreation, and Tourism 21-38-1
39. Contracts and Claims 21-39-1
41. Special Improvements 21-41-1
43. Business Improvement Districts 21-43-1
45. Tax Increment Financing 21-45-1
47. Delta Natural Gas District 21-47-1

TITLE 23. ELECTIONS

CHAPTER 1. Qualification of Candidates and Registration of Political Parties [Repealed] 23-1-1
3. Corrupt Practices [Repealed] 23-3-1
5. Registration and Elections [Repealed] 23-5-1
7. Voting Machines and Electronic Voting System [Repealed] 23-7-1
9. Absentee Ballot [Repealed] 23-9-1
11. Presidential Election Law [Repealed] 23-11-1
13. Mississippi Presidential Preference Primary and Delegate Selection Law [Repealed] 23-13-1
15. Mississippi Election Code 23-15-1
17. Amendments to Constitution by Voter Initiative 23-17-1

TITLE 25. PUBLIC OFFICERS AND EMPLOYEES; PUBLIC RECORDS

CHAPTER 1. Public Officers; General Provisions 25-1-1

TITLE 25. PUBLIC OFFICERS AND EMPLOYEES; PUBLIC RECORDS (Cont'd)

		Beginning Section
3.	Salaries and Compensation	25-3-1
4.	Ethics in Government	25-4-1
5.	Removals From Office	25-5-1
7.	Fees	25-7-1
9.	Statewide Personnel System	25-9-1
11.	Social Security and Public Employees' Retirement and Disability Benefits	25-11-1
13.	Highway Safety Patrol Retirement System	25-13-1
14.	Government Employees Deferred Compensation Plan Law	25-14-1
15.	Group Insurance for Public Employees	25-15-1
17.	Cafeteria Fringe Benefit Plans	25-17-1
19.	Public Employer-Assisted Housing Program	25-19-1
31.	District Attorneys	25-31-1
32.	Public Defenders	25-32-1
33.	Notaries Public	25-33-1
41.	Open Meetings	25-41-1
43.	Administrative Procedures	25-43-1.101
45.	Permit and Licensing Procedures	25-45-1
51.	State Depository for Public Documents	25-51-1
53.	Mississippi Department of Information Technology Services (MDITS)	25-53-1
55.	Lost Records	25-55-1
57.	Destruction of Records [Repealed]	25-57-1
58.	Geographic Information System	25-58-1
59.	Archives and Records Management	25-59-1
60.	Local Government Records	25-60-1
61.	Public Access to Public Records	25-61-1
63.	Digital Signature Act	25-63-1
65.	Agency, University and Community/Junior College Internal Auditing Program	25-65-1

TITLE 27. TAXATION AND FINANCE

CHAPTER 1.	Assessors and County Tax Collectors	27-1-1
3.	Department of Revenue	27-3-1
4.	Board of Tax Appeals	27-4-1
5.	Motor Vehicle Comptroller	27-5-1
7.	Income Tax and Withholding	27-7-1
8.	Mississippi S Corporation Income Tax Act	27-8-1
9.	Estate Tax	27-9-1
10.	Uniform Estate Tax Apportionment Act	27-10-1

TITLE 27. TAXATION AND FINANCE (Cont'd)

Beginning Section

11. Amusement Tax [Repealed] 27-11-1
13. Corporation Franchise Tax 27-13-1
15. Statewide Privilege Taxes 27-15-1
17. Local Privilege Taxes 27-17-1
19. Motor Vehicle Privilege and Excise Taxes 27-19-1
21. Finance Company Privilege Tax 27-21-1
23. Chain Store Privilege Tax [Repealed] 27-23-1
25. Severance Taxes 27-25-1
27. Vending and Amusement Machine Taxes 27-27-1
29. Ad Valorem Taxes—General Provisions 27-29-1
31. Ad Valorem Taxes—General Exemptions 27-31-1
33. Ad Valorem Taxes—Homestead Exemptions 27-33-1
35. Ad Valorem Taxes—Assessment 27-35-1
37. Ad Valorem Taxes—Payments in Lieu of Taxes 27-37-1
38. Ad Valorem Taxes—Telecommunications Tax Reform 27-38-1
39. Ad Valorem Taxes—State and Local Levies 27-39-1
41. Ad Valorem Taxes—Collection 27-41-1
43. Ad Valorem Taxes—Notice of Tax Sale to Owners and Lienors 27-43-1
45. Ad Valorem Taxes—Redemption of Land Sold for Taxes 27-45-1
47. Ad Valorem Taxes—Assignment of Tax Liens .. 27-47-1
49. Ad Valorem Taxes—Insolvencies 27-49-1
51. Ad Valorem Taxes—Motor Vehicles 27-51-1
53. Ad Valorem Taxes—Mobile Homes 27-53-1
55. Gasoline and Motor Fuel Taxes 27-55-1
57. Tax on Oils 27-57-1
59. Liquefied Compressed Gas Tax 27-59-1
61. Interstate Commercial Carriers Motor Fuel Tax 27-61-1
63. Motor Vehicle Fueling Centers [Repealed] 27-63-1
65. Sales Tax 27-65-1
67. Use or Compensating Taxes 27-67-1
68. Uniform Sales and Use Tax Administration Law 27-68-1
69. Tobacco Tax 27-69-1
70. Nonsettling-Manufacturer Cigarette Fee 27-70-1
71. Alcoholic Beverage Taxes 27-71-1
73. Tax Refunds 27-73-1
75. Reciprocal Collection of Taxes 27-75-1
77. Appellate Review for Taxpayers Aggrieved by Certain Actions of the Department of Revenue 27-77-1
101. Annual Reports by Departments of Government and State-Supported Institutions 27-101-1

TITLE 27. TAXATION AND FINANCE (Cont'd)

		Beginning Section
103.	State Budget	27-103-1
104.	State Fiscal Affairs	27-104-1
105.	Depositories	27-105-1
106.	Iran Divestment Act of 2015	27-106-1
107.	Disaster Relief	27-107-1
109.	Cruise Vessels	27-109-1
111.	Payment Credit Vouchers as Credit Against Income and Corporation Franchise Tax Liabilities [Repealed effective July 1, 2018]	27-111-1
113.	Facilitating Business Rapid Response to State Declared Disasters Act of 2015	27-113-1

TITLE 29. PUBLIC LANDS, BUILDINGS AND PROPERTY

CHAPTER 1.	Public Lands	29-1-1
3.	Sixteenth Section and Lieu Lands	29-3-1
5.	Care of Capitol, Old Capitol, State Office Buildings and Executive Mansion	29-5-1
7.	Mineral Leases of State Lands	29-7-1
9.	Inventories of State Property	29-9-1
11.	Energy Conservation in Public Buildings [Repealed]	29-11-1
13.	Flood Insurance for State-Owned Buildings	29-13-1
15.	Public Trust Tidelands	29-15-1
17.	State Agency Repair and Renovation	29-17-4

TITLE 31. PUBLIC BUSINESS, BONDS AND OBLIGATIONS

CHAPTER 1.	General Provisions Relative to Public Contracts	31-1-1
3.	State Board of Public Contractors	31-3-1
5.	Public Works Contracts	31-5-1
7.	Public Purchases	31-7-1
8.	Acquisition of Public Buildings, Facilities, and Equipment Through Rental Contracts	31-8-1
9.	Surplus Property Procurement Commission	31-9-1
11.	State Construction Projects	31-11-1
13.	Validation of Public Bonds	31-13-1
15.	Refunding Bonds	31-15-1
17.	State Bonds; Retirement of Bonds	31-17-1
18.	Variable Rate Debt Instruments	31-18-1
19.	Public Debts	31-19-1
21.	Registered Bonds	31-21-1
23.	Mississippi Private Activity Bonds Allocation Act	31-23-1
25.	Mississippi Development Bank Act	31-25-1

TITLE 31. PUBLIC BUSINESS, BONDS AND OBLIGATIONS (Cont'd)

Beginning Section
27. Mississippi Bond Refinancing Act 31-27-1
29. Institute for Technology Development 31-29-1
31. Mississippi Telecommunications Conference and Training Center 31-31-1

TITLE 33. MILITARY AFFAIRS

CHAPTER 1. Definitions and General Provisions Relating to the Military Forces 33-1-1
3. Commander in Chief, Military Department, and Governor's Staff 33-3-1
4. Mississippi Military Family Relief Fund 33-4-1
5. The Militia and Mississippi State Guard 33-5-1
7. National Guard 33-7-1
9. Property and Finances 33-9-1
11. Training Facilities 33-11-1
13. Mississippi Code of Military Justice 33-13-1
15. Emergency Management and Civil Defense 33-15-1

TITLE 35. WAR VETERANS AND PENSIONS

CHAPTER 1. State Veterans Affairs Board 35-1-1
3. War Veterans; Miscellaneous Provisions 35-3-1
5. Guardianship of Veterans 35-5-1
7. Veterans' Home Purchase Law 35-7-1
9. Pensions [Repealed] 35-9-1

TITLE 37. EDUCATION

CHAPTER 1. State Board of Education 37-1-1
3. State Department of Education 37-3-1
4. Mississippi Community College Board 37-4-1
5. County Boards of Education and Superintendents 37-5-1
6. Mississippi Uniform School Law 37-6-1
7. School Districts; Boards of Trustees of School Districts 37-7-1
9. District Superintendents, Principals, Teachers, and Other Employees 37-9-1
11. General Provisions Pertaining to Education 37-11-1
12. Mississippi Student Religious Liberties Act of 2013 37-12-1
13. Curriculum; School Year and Attendance 37-13-1

TITLE 37. EDUCATION (Cont'd)

Beginning Section

14. Mary Kirkpatrick Haskell-Mary Sprayberry Public School Nurse Act of 2007 37-14-1
15. Public Schools; Records, Enrollment and Transfer of Pupils 37-15-1
16. Statewide Testing Program 37-16-1
17. Accreditation of Schools 37-17-1
18. Superior-Performing, Exemplary and School At-Risk Schools Programs 37-18-1
19. Teacher Compensation 37-19-1
20. Remedial Education 37-20-1
21. Early Childhood Education 37-21-1
22. State Funds for School Districts 37-22-1
23. Exceptional Children 37-23-1
24. Mississippi Youth Concussion Law 37-24-1
25. Driver Education and Training 37-25-1
26. State Court Education Fund 37-26-1
27. Agricultural High Schools 37-27-1
28. Charter Schools [Repealed] 37-28-1
28. Mississippi Charter Schools Act of 2013 37-28-1
29. Junior Colleges 37-29-1
31. Vocational Education 37-31-1
33. Civilian Vocational Rehabilitation 37-33-1
35. Adult Education 37-35-1
37. Public Schools; Accounting and Auditing 37-37-1
39. Public Schools; Purchases 37-39-1
41. Transportation of Pupils 37-41-1
43. Textbooks 37-43-1
45. State Aid to Public Schools 37-45-1
47. State Aid for Construction of School Facilities 37-47-1
49. Loans to Students 37-49-1
51. Financial Assistance to Children Attending Nonsectarian Private Schools 37-51-1
53. Summer Normals 37-53-1
55. School Libraries 37-55-1
57. Taxation 37-57-1
59. School Bonds and Obligations 37-59-1
61. Expenditure of School Funds; Budgets 37-61-1
63. Educational Television 37-63-1
65. Closing of Public Schools and Institutions of Higher Learning 37-65-1
101. Institutions of Higher Learning; General Provisions 37-101-1
102. Off-campus Instructional Programs 37-102-1

TITLE 37. EDUCATION (Cont'd)

		Beginning Section
103.	Residency and Fees of Students Attending or Applying for Admission to Educational Institutions	37-103-1
104.	Mississippi Educational Facilities Authority Act for Private, Nonprofit Institutions of Higher Learning	37-104-1
105.	Campuses and Streets of State Institutions of Higher Learning	37-105-1
106.	Post-Secondary Education Financial Assistance	37-106-1
107.	Scholarships for Children of Deceased or Disabled Law Enforcement Officers or Firemen [Repealed]	37-107-1
108.	Scholarships for Children of Prisoners of War or Men Missing in Action	37-108-1
109.	Medical Education Loans and Scholarships. [Repealed]	37-109-1
110.	Mississippi Public Management Graduate Intern Program	37-110-1
111.	Fraternities, Sororities and Other Societies	37-111-1
113.	Mississippi State University of Agriculture and Applied Science	37-113-1
115.	University of Mississippi	37-115-1
117.	Mississippi University for Women	37-117-1
119.	University of Southern Mississippi	37-119-1
121.	Alcorn State University	37-121-1
123.	Delta State University	37-123-1
125.	Jackson State University	37-125-1
127.	Mississippi Valley State University	37-127-1
129.	Nursing Schools and Scholarships	37-129-1
131.	Teachers Demonstration and Practice Schools	37-131-1
132.	Student Teachers	37-132-1
133.	Technical Institutes	37-133-1
135.	Compacts with Other States	37-135-1
137.	School Asbestos Hazard Elimination Act [Repealed]	37-137-1
138.	Asbestos Abatement Accreditation and Certification Act	37-138-1
139.	Mississippi School for Mathematics and Science	37-139-1
140.	Mississippi School of the Arts	37-140-1
141.	The University Research Center Act of 1988	37-141-1
143.	Omnibus Loan or Scholarship Act of 1991	37-143-1
144.	Mississippi Rural Physicians Scholarship Program	37-144-1

TITLE 37. EDUCATION (Cont'd)

Beginning Section

145. Mississippi Opportunity Loan Program Act 37-145-1
146. Mississippi Rural Dentists Scholarship Program 37-146-1
147. Mississippi University Research Authority Act 37-147-1
148. Strengthening Mississippi Academic Research Through Business Act 37-148-1
149. Mississippi Teacher Center 37-149-1
151. Mississippi Accountability and Adequate Education Program Act of 1997 37-151-1
152. Commission on Restructuring the Mississippi Adequate Education Program (MAEP) 37-152-1
153. Workforce Training and Education Consolidation Act 37-153-1
154. State Longitudinal Data System 37-154-1
155. College Savings Plans of Mississippi 37-155-1
157. Student Tuition Assistance 37-157-1
159. Mississippi Teacher Scholarship Programs 37-159-1
160. Teach for America Act 37-160-1
161. Mississippi Education Reform Act of 2006 37-161-1
163. Education Achievement Council 37-163-1
165. Conversion Charter School Act of 2010 37-165-1
167. New Start School Program 37-167-1
169. Mississippi Autism Advisory Committee 37-169-1
171. Use of School Property by Public for Recreation and Sports 37-171-1
173. Dyslexia Therapy Scholarship for Students with Dyslexia Program 37-173-1
175. Mississippi Speech-Language Therapy Scholarship for Students with Speech-Language Impairments Program 37-175-1
177. Literacy-Based Promotion Act 37-177-1
179. Districts of Innovation 37-179-1
181. Equal Opportunity for Students with Special Needs Act 37-181-1

TITLE 39. LIBRARIES, ARTS, ARCHIVES AND HISTORY

CHAPTER 1. State Law Library; Legislative Reference Bureau 39-1-1
3. Libraries and Library Commission 39-3-1
5. Archives and History 39-5-1
7. Antiquities 39-7-1
9. Trusts to Promote Arts and Sciences 39-9-1
11. Mississippi Arts Commission 39-11-1

TITLE 39. LIBRARIES, ARTS, ARCHIVES AND HISTORY (Cont'd)

Beginning Section
13. Historic Preservation Districts and Landmarks 39-13-1
15. Municipal and County Funds to Support the Arts 39-15-1
17. Mississippi Sports Hall of Fame and Dizzy Dean Museum 39-17-1
19. Museum Unclaimed Property Act 39-19-1
21. Mississippi Craft Center 39-21-1
23. Mississippi Children's Museum 39-23-1
25. Mississippi Arts and Entertainment Center 39-25-1
27. Mississippi Blues Commission 39-27-1
29. Mississippi Commission on the Holocaust 39-29-1
31. Mississippi Bicentennial Celebration Commission [Repealed effective July 1, 2019] 39-31-1
32. Mississippi Country and Western Music Commission 39-32-1
33. Mississippi Country Music Trail 39-33-1
35. Mississippi Sesquicentennial of the American Civil War Commission [Repealed effective July 1, 2015] 39-35-1
37. Mississippi Heritage, History and Culture Trail Program 39-37-1
39. Mississippi Civil Rights Museum Advisory Commission 39-39-1

TITLE 41. PUBLIC HEALTH

CHAPTER 1. Mississippi Department of Public Health [Repealed] 41-1-1
3. State Board of Health; Local Health Boards and Officers 41-3-1
4. Department of Mental Health 41-4-1
5. Governing Authorities for State Hospitals and Institutions 41-5-1
7. Hospital and Health Care Commissions 41-7-1
9. Regulation of Hospitals; Hospital Records 41-9-1
10. Medical Records 41-10-1
11. State Charity Hospitals; Mississippi Children's Rehabilitation Center 41-11-1
13. Community Hospitals 41-13-1
15. Department for the Prevention of Insanity [Repealed] 41-15-1
17. State Mental Institutions 41-17-1
19. Facilities and Services for Individuals with an Intellectual Disability or Mental Illness 41-19-1

TITLE 41. PUBLIC HEALTH (Cont'd)

Beginning Section

21. Individuals with Mental Illness or an Intellectual Disability 41-21-1
22. Hemophilia 41-22-1
23. Contagious and Infectious Diseases; Quarantine 41-23-1
24. Sickle Cell Testing Program 41-24-1
25. Disinfection and Sanitation of Buildings and Premises 41-25-1
26. Mississippi Safe Drinking Water Act of 1997 ... 41-26-1
27. Mosquito Control 41-27-1
28. Diabetes 41-28-1
29. Poisons, Drugs and Other Controlled Substances 41-29-1
30. Alcoholism and Alcohol Abuse Prevention, Control and Treatment 41-30-1
31. Commitment of Alcoholics and Drug Addicts for Treatment 41-31-1
32. Commitment of Alcoholics and Drug Addicts to Private Treatment Facilities 41-32-1
33. Tuberculosis and Respiratory Diseases; Tuberculosis Sanatorium 41-33-1
34. Health Care Practice Requirements Pertaining to Transmission of Hepatitis B and HIV 41-34-1
35. Eye Inflammation of Young 41-35-1
36. Determination of Death 41-36-1
37. Autopsies 41-37-1
39. Disposition of Human Bodies or Parts 41-39-1
41. Surgical or Medical Procedures; Consents 41-41-1
42. Family Planning 41-42-1
43. Cemeteries and Burial Grounds 41-43-1
45. Sexual Sterilization [Repealed] 41-45-1
47. Transportation and Possession of Parakeets and Other Birds [Repealed] 41-47-1
49. Regulation of Hotels and Innkeepers 41-49-1
51. Animal and Poultry By-Products Disposal or Rendering Plants 41-51-1
53. Rabies Control in Dogs and Cats 41-53-1
55. Public Ambulance Service 41-55-1
57. Vital Statistics 41-57-1
58. Medical Radiation Technology 41-58-1
59. Emergency Medical Services 41-59-1
60. Emergency Medical Technicians — Paramedics — Use of Automated External Defibrillator .. 41-60-1
61. State Medical Examiner 41-61-1

TITLE 41. PUBLIC HEALTH (Cont'd)

		Beginning Section
63.	Evaluation and Review of Professional Health Services Providers	41-63-1
65.	[Reserved]	
67.	Mississippi Individual On-Site Wastewater Disposal System Law	41-67-1
69.	[Reserved]	
71.	Home Health Agencies	41-71-1
73.	Hospital Equipment and Facilities Authority Act	41-73-1
75.	Ambulatory Surgical Facilities	41-75-1
77.	Licensing of Birthing Centers	41-77-1
79.	Health Problems of School Children	41-79-1
81.	Perinatal Health Care	41-81-1
83.	Utilization Review of Availability of Hospital Resources and Medical Services	41-83-1
85.	Mississippi Hospice Law of 1995	41-85-1
86.	Mississippi Children's Health Care Insurance Program Act	41-86-1
87.	Early Intervention Act for Infants and Toddlers	41-87-1
88.	Mississippi Child Immunization Act of 1994	41-88-1
89.	Infant Mortality Reduction	41-89-1
90.	Hearing Impairment of Infants and Toddlers	41-90-1
91.	Central Cancer Registry	41-91-1
93.	Osteoporosis Prevention and Treatment Education Act	41-93-1
95.	Mississippi Health Policy Act of 1994	41-95-1
97.	State Employee Wellness and Physical Fitness Programs	41-97-1
99.	Qualified Health Center Grant Program	41-99-1
101.	Mississippi Council on Obesity Prevention and Management	41-101-1
103.	Task Force on Heart Disease and Stroke Prevention	41-103-1
105.	Healthcare Coordinating Council	41-105-1
107.	Health Care Rights of Conscience	41-107-1
109.	Leonard Morris Chronic Kidney Disease Leadership Task Force	41-109-1
111.	Child Death Review Panel	41-111-1
113.	Tobacco Education, Prevention and Cessation Program	41-113-1
114.	Restrictions on Tobacco Use in Public Facilities	41-114-1
115.	Tanning Facilities	41-115-1
117.	Nurse-Family Partnership Pilot Program	41-117-1
119.	Health Information Technology Act	41-119-1

TITLE 41. PUBLIC HEALTH (Cont'd)

Beginning Section
121. Requirements for Advertisements for Health Care Services 41-121-1
123. Office of Mississippi Physician Workforce 41-123-1
125. Prescribed Pediatric Extended Care Centers (PPEC) 41-125-1
127. Telemedicine Services 41-127-1
129. Umbilical Cord Blood Banking Program Act 41-129-1
131. Right to Try Act 41-131-1
133. Lay Caregivers for Hospital Patients 41-133-1

TITLE 43. PUBLIC WELFARE

CHAPTER
1. Department of Human Services and County Departments of Public Welfare 43-1-1
3. Blind Persons 43-3-1
5. Schools for the Blind and Deaf 43-5-1
6. Rights and Liabilities of Individuals with Disabilities 43-6-1
7. Council on Aging 43-7-1
9. Old Age Assistance 43-9-1
11. Institutions for the Aged or Infirm 43-11-1
13. Medical Assistance for the Aged; Medicaid 43-13-1
14. Mississippi Statewide System of Care for Children and Youth 43-14-1
15. Child Welfare 43-15-1
16. Child Residential Home Notification Act 43-16-1
17. Temporary Assistance to Needy Families 43-17-1
18. Interstate Compact on the Placement of Children 43-18-1
19. Support of Natural Children 43-19-1
20. Child Care Facilities 43-20-1
21. Youth Court 43-21-1
23. Family Courts [Repealed] 43-23-1
24. State Central Registry of Child Abuse Reports; Wide Area Telephone Service for Reporting Child Abuse [Repealed] 43-24-1
25. Interstate Compacts Relating to Juveniles 43-25-1
27. Department of Youth Services 43-27-1
29. Individuals with Disabilities 43-29-1
30. Mississippi Disability Resource Commission 43-30-1
31. Poor Persons 43-31-1
33. Housing and Housing Authorities 43-33-1
35. Urban Renewal and Redevelopment 43-35-1

TITLE 43. PUBLIC WELFARE (Cont'd)

Beginning Section

37. Acquisition of Real Property Using Public Funds 43-37-1
39. Relocation Assistance 43-39-1
41. Emergency and Disaster Assistance [Repealed] 43-41-1
43. Administration of Social Security Funds 43-43-1
45. Adult Protective Services [Repealed] 43-45-1
47. Mississippi Vulnerable Persons Act 43-47-1
49. Mississippi Welfare Restructuring Program Act of 1993 [Repealed] 43-49-1
51. Family Preservation Act of 1994 43-51-1
53. Mississippi Leadership Council on Aging 43-53-1
55. Mississippi Commission for National and Community Service 43-55-1
57. Comprehensive Plan for Provision of Services to Disabled Persons [Repealed] ....
59. Mississippi Commission on the Status of Women 43-59-1
61. Mississippi Seniors and Indigents Rx Program 43-61-1

TITLE 45. PUBLIC SAFETY AND GOOD ORDER

CHAPTER

1. Department of Public Safety 45-1-1
2. Law Enforcement Officers and Fire Fighters Death and Disability Benefits Trust Funds ... 45-2-1
3. Highway Safety Patrol 45-3-1
4. County Jail Officers Training Program 45-4-1
5. Law Enforcement Officers' Training Academy .. 45-5-1
6. Law Enforcement Officers Training Program ... 45-6-1
7. County Patrol Officers 45-7-1
9. Weapons 45-9-1
10. Novelty Lighters 45-10-1
11. Fire Protection Regulations, Fire Protection and Safety in Buildings 45-11-1
12. Mississippi Fire Safety Standard and Firefighter Protection Act [For contingent repeal of this chapter, see § 45-12-21] 45-12-1
13. Fireworks and Explosives 45-13-1
14. Radiation Protection Program 45-14-1
15. High Voltage Power Lines 45-15-1
17. Civil Emergencies 45-17-1
18. Emergency Management Assistance Compact .. 45-18-1
19. Subversive Groups and Subversive Activities ... 45-19-51
21. Rock Festivals 45-21-1
23. Boiler and Pressure Vessel Safety 45-23-1
25. Identification Cards for Non-Drivers. [Repealed] 45-25-1

TITLE 45. PUBLIC SAFETY AND GOOD ORDER (Cont'd)

Beginning Section
27. Mississippi Justice Information Center 45-27-1
29. Records 45-29-1
31. Sex Offense Criminal History Record Information Act 45-31-1
33. Registration of Sex Offenders 45-33-1
35. Identification Cards 45-35-1
37. Prevention of Youth Access to Tobacco Act 45-37-1
39. Statewide Crime Stoppers Advisory Council 45-39-1
41. Mississippi Silver Alert System 45-41-1
43. William Lee Montjoy Pool Safety Act 45-43-1
45. Mississippi Conveyance Safety Act 45-45-1
47. DNA Data Bank 45-47-1

TITLE 47. PRISONS AND PRISONERS; PROBATION AND PAROLE

CHAPTER 1. County and Municipal Prisons and Prisoners 47-1-1
3. Removal of Prisoners 47-3-1
4. Privately Operated Correctional Facilities 47-4-1
5. Correctional System 47-5-1
7. Probation and Parole 47-7-1

TITLE 49. CONSERVATION AND ECOLOGY

CHAPTER 1. General Provisions 49-1-1
2. Department of Environmental Quality 49-2-1
3. Fisheries and Wildlife Research 49-3-1
4. Mississippi Department of Wildlife, Fisheries and Parks 49-4-1
5. Fish, Game and Bird Protection and Refuges 49-5-1
6. Motor Vehicle and Boat Replacement Program 49-6-1
7. Hunting and Fishing 49-7-1
8. Importation, Sale and Possession of Inherently Dangerous Wild Animals 49-8-1
9. Mussels 49-9-1
10. Wildlife Violator Compact 49-10-1
11. Private Shooting Preserves 49-11-1
13. Commercial Quail 49-13-1
15. Seafood 49-15-1
17. Pollution of Waters, Streams, and Air 49-17-1
18. Mississippi Liability of Persons Responding to Oil Spills Act 49-18-1
19. Forests and Forest Protection 49-19-1
20. Mississippi River Timberlands Control Act [Repealed] 49-20-1

TITLE 49. CONSERVATION AND ECOLOGY (Cont'd)

			Beginning Section
	21.	Interstate Environmental Compact	49-21-1
	23.	Outdoor Advertising	49-23-1
	25.	Junkyards	49-25-1
	26.	Channel Maintenance Act	49-26-1
	27.	Coastal Wetlands Protection Act	49-27-1
	28.	Shoreline and Beach Preservation Districts	49-28-1
	29.	Environmental Protection Council [Repealed]	49-29-1
	31.	Mississippi Multimedia Pollution Prevention Act	49-31-1
	33.	Mississippi Agricultural and Forestry Activity Act	49-33-1
	35.	Mississippi Brownfields Voluntary Cleanup and Redevelopment; Remediation of Property on National Priorities List	49-35-1
	37.	Statewide Scientific Information Management	49-37-1

TITLE 51. WATERS, WATER RESOURCES, WATER DISTRICTS, DRAINAGE, AND FLOOD CONTROL

Chapter	1.	Navigable Waters	51-1-1
	2.	Mississippi Marine Litter Act	51-2-1
	3.	Water Resources; Regulation and Control	51-3-1
	4.	Mississippi Scenic Streams Stewardship Act	51-4-1
	5.	Subsurface Waters; Well Drillers	51-5-1
	7.	Water Management Districts	51-7-1
	8.	Joint Water Management Districts	51-8-1
	9.	Development of Region Bordering Pearl River; Pearl River Valley Water Supply District; Metropolitan Area Water Supply Act	51-9-1
	11.	Pearl River Basin Development District	51-11-1
	13.	Tombigbee Valley Authority and Water Management District	51-13-1
	15.	Pat Harrison Waterway Commission and District	51-15-1
	17.	Big Black River Basin District	51-17-1
	19.	West Central Mississippi Waterway Commission [Repealed]	51-19-1
	21.	Lower Mississippi River Basin Development District [Repealed]	51-21-1
	23.	Lower Yazoo River Basin District. [Repealed]	51-23-1
	25.	Yellow Creek Watershed Authority	51-25-1
	27.	Tennessee-Tombigbee Waterway Compact	51-27-1
	29.	Drainage Districts with Local Commissioners	51-29-1
	31.	Drainage Districts with County Commissioners	51-31-1

TITLE 51. WATERS, WATER RESOURCES, WATER DISTRICTS, DRAINAGE, AND FLOOD CONTROL (Cont'd)

Beginning Section
33. Provisions Common to Drainage Districts and Swamp Land Districts 51-33-1
35. Flood Control 51-35-1
37. Watershed Districts 51-37-1
39. Storm Water Management Districts 51-39-1
41. Public Water Authorities 51-41-1

TITLE 53. OIL, GAS, AND OTHER MINERALS

CHAPTER 1. State Oil and Gas Board 53-1-1
3. Development, Production and Distribution of Gas and Oil 53-3-1
5. Geological and Mineral Survey 53-5-1
7. Surface Mining and Reclamation of Land 53-7-1
9. Surface Coal Mining and Reclamation of Land 53-9-1
10. Interstate Mining Compact 53-10-1
11. Mississippi Geologic Sequestration of Carbon Dioxide Act 53-11-1

TITLE 55. PARKS AND RECREATION

CHAPTER 1. Mississippi Recreational Advisory Council [Repealed] 55-1-1
3. State Parks and Forests 55-3-1
5. Federal Parks and National Parkways 55-5-1
7. Bridge and Park Commissions 55-7-1
9. County and Municipal Facilities 55-9-1
11. Harrison County Parkway 55-11-1
13. Natchez Trace Parkway 55-13-1
15. Commemorative Parks and Monuments 55-15-1
17. International Gardens of Mississippi 55-17-1
19. Bienville Recreational District 55-19-1
21. Mississippi Zoological Park and Garden Districts 55-21-1
23. Mississippi Veterans Memorial Stadium 55-23-1
24. Mississippi Coast Coliseum Commission 55-24-1
25. Rails-to-Trails Recreational District 55-25-1

TITLE 57. PLANNING, RESEARCH AND DEVELOPMENT

CHAPTER 1. Mississippi Development Authority 57-1-1
3. Agriculture and Industry Program 57-3-1
4. Industrial Development Fund 57-4-1
5. Industrial Parks and Districts 57-5-1

TITLE 57. PLANNING, RESEARCH AND DEVELOPMENT (Cont'd)

Beginning Section
7. Sale or Development of Airport Lands, or Other Lands, for Industrial Purposes 57-7-1
9. Industrial Plant Training 57-9-1
10. Small Business Assistance 57-10-1
11. Market and Industrial Studies and Research ... 57-11-1
13. Research and Development Center 57-13-1
15. Marine Resources 57-15-1
17. Forest Products Utilization Laboratory [Repealed] 57-17-1
18. Renewable Natural Resources Research Act of 1994 57-18-1
19. Food Technology Laboratory 57-19-1
21. State Chemical Laboratory 57-21-1
23. Pharmaceutical Product Development and Utilization 57-23-1
25. Southern States Energy Compact 57-25-1
26. Tourism Project Incentive Program; Theme Parks, Entertainment Centers, Scenic Attractions, etc. 57-26-1
27. Regional Tourist Promotion Councils 57-27-1
28. Tourism Project Incentive Program; Entertainment Districts, etc. 57-28-1
29. Travel and Tourism 57-29-1
30. Family-Oriented Enterprises 57-30-1
31. County Industrial Development Authorities 57-31-1
32. Southeast Mississippi Industrial Council 57-32-1
33. Southern Growth Policies Agreement 57-33-1
34. Alabama-Mississippi Joint Economic Development Authority 57-34-1
35. Tennessee River Valley Association 57-35-1
36. Chickasaw Trail Economic Development Compact [Repealed] 57-36-1
37. Transportation Planning Council [Repealed] 57-37-1
39. Energy and Transportation Planning 57-39-1
40. Energy Infrastructure Revolving Loan Program 57-40-1
41. Financing Industrial Enterprise Projects 57-41-1
43. Railroad Revitalization 57-43-1
44. Local Governments Freight Rail Service Projects 57-44-1
45. Mississippi-Louisiana-Alabama Rapid Rail Transit Compact 57-45-1
46. Mississippi Railroad Improvements Fund 57-46-1
47. Southeast Interstate Low-Level Radioactive Waste Management Compact 57-47-1

TITLE 57. PLANNING, RESEARCH AND DEVELOPMENT (Cont'd)

Beginning Section
49. Nuclear Waste Storage and Disposal 57-49-1
51. Enterprise Zones [Repealed] 57-51-1
53. Corporate Headquarters Incentive Program [Repealed] 57-53-1
54. Advanced Technology Initiative [Repealed] 57-54-1
55. Universities Research Institutes 57-55-1
56. Mississippi Technology Transfer Office 57-56-1
57. Export Trade Development 57-57-1
59. Mississippi Capital Companies [Repealed] 57-59-1
61. Mississippi Business Investment Act 57-61-1
62. Mississippi Advantage Jobs Act 57-62-1
63. Statewide Economic Development and Planning Act 57-63-1
64. Regional Economic Development 57-64-1
65. Mississippi International Trade Institute 57-65-1
67. Mississippi Superconducting Super Collider Act 57-67-1
69. Mississippi Minority Business Enterprise Act .. 57-69-1
71. Mississippi Small Enterprise Development Finance Act 57-71-1
73. Economic Development Reform Act 57-73-1
75. Mississippi Major Economic Impact Act 57-75-1
77. Venture Capital Act of 1994 57-77-1
79. Mississippi Small Town Development Act 57-79-1
80. Growth and Prosperity Act 57-80-1
81. Mississippi Science and Technology Commission [Repealed] 57-81-1
83. Mississippi Technology, Inc. Liaison Committee 57-83-1
85. Mississippi Rural Impact Act 57-85-1
87. Mississippi Broadband Technology Development Act 57-87-1
89. Mississippi Motion Picture Incentive Act 57-89-1
91. Economic Redevelopment Act 57-91-1
93. Mississippi Existing Industry Productivity Loan Program 57-93-1
95. Mississippi Job Protection Act 57-95-1
97. Mississippi Delta Revitalization Act of 2006 57-97-1
99. Mississippi Major Economic Impact Withholding Rebate Incentive Program 57-99-1
100. Existing Industry Withholding Rebate Incentive Program 57-100-1
101. Mississippi Major Economic Impact Authority Component Construction Material Costs Rebate Program 57-101-1

TITLE 57. PLANNING, RESEARCH AND DEVELOPMENT (Cont'd)

Beginning Section

103. Technology Based Business Capital Assistance Programs 57-103-1
105. Qualified Equity Investment Tax Credits and Public Entity Financing Arrangements 57-105-1
107. Mississippi Workforce Training Projects 57-107-1
111. Mississippi Small Business and Existing Forestry Industry Enterprise Participating Loan Program 57-111-1
113. Business Enterprise Tax Exemptions 57-113-1
115. Mississippi Small Business Investment Company Act 57-115-1
117. Mississippi Health Care Industry Zone Act [Repealed effective July 1, 2022] 57-117-1

TITLE 59. PORTS, HARBORS, LANDINGS AND WATERCRAFT

Chapter 1. Harbor or Port Commissions; Powers of Political Subdivision; Pilotage 59-1-1
3. Ports of Entry 59-3-1
5. State Ports and Harbors 59-5-1
6. Compact for Development of Deep Draft Harbor and Terminal 59-6-1
7. County and Municipal Harbors 59-7-1
9. County Port Authority or Development Commission 59-9-1
11. County Port and Harbor Commission 59-11-1
13. Harbor Improvements by Coast Counties 59-13-1
15. Small Craft Harbors 59-15-1
17. State Inland Ports 59-17-1
19. Landings 59-19-1
21. Boats and Other Vessels 59-21-1
23. Alcohol Boating Safety Act 59-23-1
25. Certificates of Title for Boats and Other Vessels 59-25-1

TITLE 61. AVIATION

Chapter 1. Transportation Commission 61-1-1
3. Airport Authorities 61-3-1
4. Mississippi Wayport Authority Act 61-4-1
5. Acquisition, Disposition and Support of Airport Facilities 61-5-1
7. Airport Zoning 61-7-1
9. Incorporation of Airport Into Corporate Boundaries of Municipality 61-9-1

TITLE 61. AVIATION (Cont'd)

Beginning Section
11. Operation of Aircraft; Certification and Licensing of Pilots and Aircraft 61-11-1
13. Aircraft for Use of Governor, State Departments and Agencies 61-13-1
15. Registration of Aircraft 61-15-1
17. Concealing or Misrepresenting Aircraft Identification Number; Non-Conforming Aircraft Fuel Containers 61-17-1
19. Aviation Hazards 61-19-1

TITLE 63. MOTOR VEHICLES AND TRAFFIC REGULATIONS

CHAPTER 1. Driver's License 63-1-1
2. Mandatory Use of Safety Seat Belts 63-2-1
3. Traffic Regulations and Rules of the Road 63-3-1
5. Size, Weight and Load 63-5-1
7. Equipment and Identification 63-7-1
9. Traffic Violations Procedure 63-9-1
10. Nonresident Traffic Violator Compact 63-10-1
11. Implied Consent Law 63-11-1
13. Inspection of Motor Vehicles 63-13-1
15. Motor Vehicle Safety — Responsibility 63-15-1
16. Public Safety Verification and Enforcement Act [Repealed effective July 1, 2018] 63-16-1
17. Manufacture, Sales and Distribution 63-17-1
19. Motor Vehicle Sales Finance Law 63-19-1
21. Motor Vehicle Titles 63-21-1
23. Abandoned Motor Vehicles 63-23-1
25. Motor Vehicle Chop Shop, Stolen and Altered Property Act 63-25-1
27. Disclosure of Use of Nonoriginal Replacement Parts 63-27-1
29. Mississippi Vehicle Protection Product Act 63-29-1
31. Operating Off-Road Vehicles 63-31-1
33. Miscellaneous Provisions 63-33-1

TITLE 65. HIGHWAYS, BRIDGES AND FERRIES

CHAPTER 1. Transportation Department 65-1-1
2. State Transportation Arbitration Board 65-2-1
3. State Highway System 65-3-1
4. Economic Development Highway Act 65-4-1
5. Controlled Access Facilities 65-5-1
7. Public Roads and Streets; Private Way 65-7-1

TITLE 65. HIGHWAYS, BRIDGES AND FERRIES (Cont'd)

Beginning Section
9. State Aid Roads in Counties 65-9-1
10. County Major Feeder Road System [Repealed] 65-10-1
11. County Highway Aid 65-11-1
13. Highway and Street Revenue Bond Authority 65-13-1
15. County Funds for Roads and Bridges 65-15-1
17. County Road Officials 65-17-1
18. Local System Road Program 65-18-1
19. Separate Road Districts 65-19-1
21. Bridges; General Provisions 65-21-1
23. Bridges; Boundary and Other Waters 65-23-1
25. Mississippi River Bridges 65-25-1
26. Tennessee-Tombigbee Waterway Bridges 65-26-1
27. Ferries; General Provisions 65-27-1
29. Ferries in Certain Counties 65-29-1
31. Hospitality Stations on Highways 65-31-1
33. Sea Walls 65-33-1
37. Local System Bridge Replacement and Rehabilitation Program 65-37-1
39. Gaming Counties Bond Sinking Fund 65-39-1
41. Mississippi Scenic Byways 65-41-1
43. Toll Roads and Toll Bridges 65-43-1

TITLE 67. ALCOHOLIC BEVERAGES

CHAPTER 1. Local Option Alcoholic Beverage Control 67-1-1
3. Sale of Light Wine, Beer, and Other Alcoholic Beverages 67-3-1
5. Native Wines 67-5-1
7. Beer Industry Fair Dealing Act 67-7-1
9. Possession or Transportation of Alcoholic Beverages, Light Wine, or Beer 67-9-1

TITLE 69. AGRICULTURE, HORTICULTURE, AND ANIMALS

CHAPTER 1. Agriculture and Commerce Department; Council on Agriculture 69-1-1
2. Mississippi Farm Reform Act 69-2-1
3. Agricultural Seeds 69-3-1
5. Fairs; Stock Shows; Improvement of Livestock 69-5-1
7. Markets and Marketing; Domestic Fish Farming 69-7-1
8. Beef Promotion And Research Program ....
9. Soybean Promotion Board 69-9-1
10. Rice Promotion Board 69-10-1

TITLE 69. AGRICULTURE, HORTICULTURE, AND ANIMALS (Cont'd)

Beginning Section
11. Swine 69-11-1
13. Stock Laws, Estrays 69-13-1
15. Board of Animal Health; Livestock and Animal Diseases 69-15-1
17. Livestock Biologics, Drugs and Vaccines 69-17-1
19. Regulation of Professional Services 69-19-1
21. Crop Spraying and Licensing of Aerial Applicators 69-21-1
23. Mississippi Pesticide Law 69-23-1
24. Fertilizing Materials and Additives 69-24-1
25. Plants, Plant and Bee Diseases 69-25-1
26. Pest Control Compact 69-26-1
27. Soil Conservation 69-27-1
28. Protection and Conservation of Agricultural Lands 69-28-1
29. Livestock Brands, Theft or Loss of Livestock and Protective Associations 69-29-1
31. Regulation of Moisture-Measuring Devices 69-31-1
33. Pecan Harvesting 69-33-1
34. Milk Producers Transportation Cost Assistance Loan Program 69-34-1
35. Mississippi Dairy Promotion Act 69-35-1
36. Southern Dairy Compact 69-36-1
37. Mississippi Boll Weevil Management Act 69-37-1
39. Agricultural Liming Materials 69-39-1
41. Mississippi Agribusiness Council Act of 1993 69-41-1
42. Program to Encourage Growth in Mississippi Agribusiness Industry 69-42-1
43. Mississippi Ratite Council and Promotion Board 69-43-1
44. Mississippi Corn Promotion Board 69-44-1
45. Mississippi Agricultural Promotions Program Act 69-45-1
46. Mississippi Land, Water and Timber Resources Act 69-46-1
47. Organic Certification Program 69-47-1
48. Peanut Promotion Board 69-48-1
49. Field Crop Products 69-49-1
51. Ethanol, Anhydrous Alcohol and Wet Alcohol 69-51-1
53. Agritourism [Repealed effective July 1, 2018] 69-53-1

TITLE 71. LABOR AND INDUSTRY

CHAPTER 1. Employer and Employee 71-1-1

TITLE 71. LABOR AND INDUSTRY (Cont'd)

Beginning Section
3. Workers' Compensation 71-3-1
5. Unemployment Compensation 71-5-1
7. Drug and Alcohol Testing of Employees 71-7-1
9. Medical Savings Account Act 71-9-1
11. Employment Protection Act 71-11-1
13. Prohibition Against Employer Intimidation Act 71-13-1
15. Mississippi Employment Fairness Act 71-15-1

TITLE 73. PROFESSIONS AND VOCATIONS

CHAPTER
1. Architects 73-1-1
2. Landscape Architectural Practice 73-2-1
3. Attorneys at Law 73-3-1
4. Auctioneers 73-4-1
5. Barbers 73-5-1
6. Chiropractors 73-6-1
7. Cosmetologists 73-7-1
9. Dentists 73-9-1
10. Dietitians 73-10-1
11. Practice of Funeral Service and Funeral Directing 73-11-1
13. Engineers and Land Surveyors 73-13-1
14. Hearing Aid Dealers 73-14-1
15. Nurses 73-15-1
17. Nursing Home Administrators 73-17-1
19. Optometry and Optometrists 73-19-1
21. Pharmacists 73-21-1
22. Orthotics and Prosthetics 73-22-1
23. Physical Therapists 73-23-1
24. Mississippi Occupational Therapy Practice Act 73-24-1
25. Physicians 73-25-1
26. Physician Assistants 73-26-1
27. Podiatrists 73-27-1
29. Polygraph Examiners 73-29-1
30. Licensed Professional Counselors 73-30-1
31. Psychologists 73-31-1
33. Public Accountants 73-33-1
34. Real Estate Appraisers 73-34-1
35. Real Estate Brokers 73-35-1
36. Registered Foresters 73-36-1
37. Sanitarians 73-37-1
38. Speech Pathologists and Audiologists 73-38-1
39. Veterinarians 73-39-1

TITLE 73. PROFESSIONS AND VOCATIONS (Cont'd)

Beginning Section

41. Athlete Agents [Repealed] 73-41-1
42. Uniform Athlete Agents Law 73-42-1
43. State Board of Medical Licensure 73-43-1
45. Information to Be Included in Prescriptions 73-45-1
47. [Reserved] ....
49. Health Care Provider Licensing Boards 73-49-1
50. Licensing, Certifying or Registering Military-trained Individuals or Spouses to Lawfully Practice Occupation 73-50-1
51. Unlicensed Practice of Profession 73-51-1
52. Licensure Records 73-52-1
53. Licensing and Regulation of Social Workers 73-53-1
54. Marriage and Family Therapists 73-54-1
55. Mississippi Athletic Trainers Licensure Act 73-55-1
57. Mississippi Respiratory Care Practice Act 73-57-1
59. Residential Builders and Remodelers 73-59-1
60. Home Inspectors 73-60-1
61. Tattooing and Body Piercing 73-61-1
63. Registered Professional Geologists Practice Act 73-63-1
65. Professional Art Therapists 73-65-1
67. Professional Massage Therapists 73-67-1
69. Mississippi Electronic Protection Licensing Act 73-69-1
71. Acupuncture Practice Act 73-71-1
73. Mississippi Certified Interior Designer Act 73-73-1
75. Licensed Behavior Analysts 73-75-1

TITLE 75. REGULATION OF TRADE, COMMERCE AND INVESTMENTS

Chapter 1. Uniform Commercial Code — Revised Article 1. General Provisions 75-1-101
2. Uniform Commercial Code — Sales 75-2-101
2A. Uniform Commercial Code — Leases 75-2A-101
3. Uniform Commercial Code — Negotiable Instruments 75-3-101
4. Uniform Commercial Code—Bank Deposits and Collections 75-4-101
4A. Uniform Commercial Code—Funds Transfers 75-4A-101
5. Uniform Commercial Code—Revised Article 5. Letters of Credit 75-5-101
6. Uniform Commercial Code—Bulk Transfers 75-6-101
7. Uniform Commercial Code—Documents of Title 75-7-101
8. Uniform Commercial Code—Revised Article 8. Investment Securities 75-8-101

TITLE 75. REGULATION OF TRADE, COMMERCE AND INVESTMENTS (Cont'd)

		Beginning Section
9.	Uniform Commercial Code—Secured Transactions	75-9-101
10.	Uniform Commercial Code—Effective Date and Repealer	75-10-101
11.	Uniform Commercial Code—Effective Date and Transition Provisions: 1977 Amendments	75-11-101
12.	Uniform Electronic Transactions Act	75-12-1
13.	Bills, Notes and Other Writings	75-13-1
15.	Mississippi Money Transmitters Act	75-15-1
17.	Interest, Finance Charges, and Other Charges	75-17-1
18.	Revolving Charge Agreements; Credit Cards [Repealed]	75-18-1
19.	Seals	75-19-1
21.	Trusts and Combines in Restraint or Hindrance of Trade	75-21-1
23.	Fair Trade Laws	75-23-1
24.	Regulation of Business for Consumer Protection	75-24-1
25.	Registration of Trademarks and Labels	75-25-1
26.	Mississippi Uniform Trade Secrets Act	75-26-1
27.	Weights and Measures	75-27-1
29.	Sale and Inspection of Food and Drugs	75-29-1
31.	Milk and Milk Products	75-31-1
33.	Meat, Meat-Food and Poultry Regulation and Inspection	75-33-1
35.	Meat Inspection	75-35-1
37.	Operation of Frozen Food Locker Plants [Repealed]	75-37-1
39.	Sale of Baby Chicks	75-39-1
40.	Importation and Sale of Animals or Birds	75-40-1
41.	Gins	75-41-1
43.	Farm Warehouses	75-43-1
44.	Grain Warehouses	75-44-1
45.	Commercial Feeds and Grains	75-45-1
47.	Commercial Fertilizers	75-47-1
49.	Factory-Built Homes	75-49-1
51.	Water Heaters	75-51-1
53.	Paints, Varnishes and Similar Materials	75-53-1
55.	Gasoline and Petroleum Products	75-55-1
56.	Antifreeze and Summer Coolants	75-56-1
57.	Liquefied Petroleum Gases	75-57-1
58.	Mississippi Natural Gas Marketing Act	75-58-1
59.	Correspondence Courses	75-59-1

TITLE 75. REGULATION OF TRADE, COMMERCE AND INVESTMENTS (Cont'd)

Beginning Section

60. Proprietary Schools and Colleges 75-60-1
61. Manufacture and Sale of Jewelry and Optical Equipment 75-61-1
63. Sales of Cemetery Merchandise and Funeral Services 75-63-1
65. Going Out of Business Sales; Unsolicited Goods 75-65-1
66. Home Solicitation Sales 75-66-1
67. Loans 75-67-1
69. Farm Loan Bonds 75-69-1
71. Mississippi Securities Act of 2009 75-71-101
72. Business Takeovers 75-72-1
73. Hotels and Innkeepers 75-73-1
74. Youth Camps 75-74-1
75. Amusements, Exhibitions and Athletic Events 75-75-1
76. Mississippi Gaming Control Act 75-76-1
77. Repurchase of Inventories From Retailers Upon Termination of Contract 75-77-1
79. Pulpwood Scaling and Practices 75-79-1
81. Dance Studio Lessons 75-81-101
83. Health Spas 75-83-1
85. Transient Vendor 75-85-1
87. Contracts Between Out-of-State Principals and Commissioned Sales Representatives 75-87-1
89. Mississippi Commodities Enforcement Act 75-89-1
91. Truth in Music Advertising 75-91-1
93. Fictitious Business Name Registration Act 75-93-1
95. Business of Purchasing Precious Items for Resale 75-95-1

TITLE 77. PUBLIC UTILITIES AND CARRIERS

CHAPTER

1. Public Service Commission 77-1-1
2. Public Utilities Staff 77-2-1
3. Regulation of Public Utilities 77-3-1
5. Electric Power 77-5-1
6. Municipal Gas Authority of Mississippi Law 77-6-1
7. Motor Carriers 77-7-1
9. Railroads and Other Common Carriers 77-9-1
11. Gas Pipelines and Distribution Systems 77-11-1
13. Regulation of Excavations Near Underground Utility Facilities 77-13-1
15. Local Natural Gas Districts 77-15-1

TITLE 79. CORPORATIONS, ASSOCIATIONS, AND PARTNERSHIPS

			Beginning Section
CHAPTER	1.	General Provisions Relative to Corporations	79-1-1
	3.	Business Corporations [Repealed]	79-3-1
	4.	Mississippi Business Corporation Act	79-4-1.01
	5.	Business Development Corporations [Repealed]	79-5-1
	6.	Foreign Limited Liability Companies [Repealed]	79-6-1
	7.	Small Business Investment Companies	79-7-1
	9.	Professional Corporations [Repealed]	79-9-1
	10.	Mississippi Professional Corporation Act	79-10-1
	11.	Nonprofit, Nonshare Corporations and Religious Societies	79-11-1
	12.	Partnerships [Repealed]	79-12-1
	13.	Uniform Partnership Act (1997)	79-13-101
	14.	Mississippi Uniform Limited Partnership Act	79-14-101
	15.	Investment Trusts	79-15-1
	16.	Mississippi Registration of Foreign Business Trusts Act	79-16-1
	17.	Agricultural Associations; Conversion to Corporate Form	79-17-1
	19.	Agricultural Cooperative Marketing Associations	79-19-1
	21.	Aquatic Products Marketing Association	79-21-1
	22.	Mississippi Aquaculture Act of 1988	79-22-1
	23.	Commercial and Proprietary Information	79-23-1
	25.	Mississippi Shareholder Protection Act	79-25-1
	27.	Mississippi Control Share Act	79-27-1
	29.	Revised Mississippi Limited Liability Company Act	79-29-101
	31.	Mississippi Registration of Foreign Limited Liability Partnerships Act [Repealed]	79-31-1
	33.	Corporate Successor Asbestos-Related Liability in Connection with Mergers or Consolidations	79-33-1
	35.	The Mississippi Registered Agents Act	79-35-1
	37.	Mississippi Entity Conversion and Domestication Act	79-37-101

TITLE 81. BANKS AND FINANCIAL INSTITUTIONS

CHAPTER	1.	Department of Banking and Consumer Finance	81-1-1
	3.	Incorporation and Organization of Banks	81-3-1
	5.	General Provisions Relating to Banks and Banking	81-5-1
	7.	Branch Banks	81-7-1

TITLE 81. BANKS AND FINANCIAL INSTITUTIONS (Cont'd)

Beginning Section
8. Regional Banking Institutions 81-8-1
9. Insolvent Banks 81-9-1
11. Savings and Loan Associations [Repealed] 81-11-1
12. Savings Associations Law 81-12-1
13. Credit Unions 81-13-1
14. Savings Bank Law 81-14-1
15. Mississippi Rural Credit Law 81-15-1
17. Farmers' Credit Associations 81-17-1
18. Mississippi S.A.F.E. Mortgage Act 81-18-1
19. Consumer Loan Broker Act 81-19-1
20. Consumer Complaints and Disputes Against Mortgage Companies 81-20-1
21. Insurance Premium Finance Companies 81-21-1
22. Mississippi Debt Management Services Act [Repealed effective July 1, 2016] 81-22-1
23. Interstate Bank Branching 81-23-1
25. The Mississippi International Banking Act 81-25-1
27. Multistate, State and Limited Liability Trust Institutions 81-27-1.001
29. Lender Trade Name and Trademark Use 81-29-1

TITLE 83. INSURANCE

CHAPTER 1. Department of Insurance 83-1-1
2. Competitive Rating for Property and Casualty Insurance 83-2-1
3. Commissioner of Insurance, Rating Bureau and Rates 83-3-1
5. General Provisions Relative to Insurance and Insurance Companies 83-5-1
6. Registration and Examination of Insurers 83-6-1
7. Life Insurance 83-7-1
9. Accident, Health and Medicare Supplement Insurance 83-9-1
11. Automobile Insurance 83-11-1
13. Fire Insurance 83-13-1
14. Homeowners' and Farmowners' Insurance [Repealed] 83-14-1
15. Title Insurance 83-15-1
17. Insurance Agents, Solicitors, or Adjusters 83-17-1
18. Insurance Administrators and Managing General Agents 83-18-1
19. Domestic Companies 83-19-1

TITLE 83. INSURANCE (Cont'd)

		Beginning Section
20.	Domicile Change for Domestic and Foreign Insurers	83-20-1
21.	Foreign Companies	83-21-1
23.	Insolvent Insurance Companies; Insurance Guaranty Association	83-23-1
24.	Insurers Rehabilitation and Liquidation Act	83-24-1
25.	Co-operative Insurance	83-25-1
27.	Surety Companies	83-27-1
29.	Fraternal Societies	83-29-1
30.	Larger Fraternal Benefit Societies	83-30-1
31.	Mutual Companies	83-31-1
33.	Reciprocal Insurance	83-33-1
34.	Windstorm Underwriting Association	83-34-1
35.	Underwriting Association [Repealed]	83-35-1
36.	Joint Underwriting Association for Medical Malpractice Insurance	83-36-1
37.	Burial Associations	83-37-1
38.	Mississippi Residential Property Insurance Underwriting Association Law	83-38-1
39.	Bail Bonds and Bondsmen	83-39-1
41.	Hospital and Medical Service Associations and Contracts	83-41-1
43.	Nonprofit Dental Service Corporations	83-43-1
45.	Nonprofit, Community Service Blood Supply Plans	83-45-1
47.	Nonprofit Medical Liability Insurance Corporations	83-47-1
48.	Medical Malpractice Insurance Availability Act	83-48-1
49.	Legal Expense Insurance	83-49-1
51.	Dental Care Benefits	83-51-1
53.	Credit Life and Credit Disability Insurance	83-53-1
54.	Mississippi Creditor-Placed Insurance Act	83-54-1
55.	Risk Retention Act	83-55-1
57.	Home Warranties [Repealed].	83-57-1
58.	New Home Warranty Act	83-58-1
59.	Business Transacted With Producer Controlled Insurer Act	83-59-1
61.	Voluntary Basic Health Insurance Coverage Law	83-61-1
62.	Health Savings Accounts	83-62-1
63.	Small Employer Health Benefit Plans	83-63-1
64.	Health Discount Plans	83-64-1
65.	Regulation of Vehicle Service Contracts	83-65-101

TITLE 83. INSURANCE (Cont'd)

Beginning Section

67. Utilization of Modern Systems for Holding and Transferring Securities Without Physical Delivery ... 83-67-1
69. Interstate Insurance Product Regulation Compact ... 83-69-1
71. Unfair Discrimination Against Subjects of Abuse in Health, Life, and Disability Income Insurance ... 83-71-1
73. Portable Electronics Insurance ... 83-73-1
75. Homeowners Insurance Discount for Hurricane or Windstorm Damage Mitigation ... 83-75-1
77. Health Care Sharing Ministries ... 83-77-1
79. Property Insurance Clarity Act ... 83-79-1
81. Mississippi Direct Primary Care Act ... 83-81-1
83. Limited Lines Travel Insurance Act ... 83-83-1

TITLE 85. DEBTOR-CREDITOR RELATIONSHIP

CHAPTER 1. Assignment for Benefit of Creditors ... 85-1-1
3. Exempt Property ... 85-3-1
5. Joint and Several Debtors ... 85-5-1
7. Liens ... 85-7-1
8. Uniform Federal Lien Registration Act ... 85-8-1
9. Debt Adjusting or Credit Arranging [Repealed]. 85-9-1
11. Mississippi Uniform State Tax Lien Registration Act ... 85-11-1

TITLE 87. CONTRACTS AND CONTRACTUAL RELATIONS

CHAPTER 1. Gambling and Future Contracts ... 87-1-1
3. Power and Letters of Attorney ... 87-3-1
5. Principal and Surety ... 87-5-1
7. Improvements to Real Property ... 87-7-1
9. General Provisions ... 87-9-1

TITLE 89. REAL AND PERSONAL PROPERTY

CHAPTER 1. Land and Conveyances ... 89-1-1
2. Liability of Recreational Landowners ... 89-2-1
3. Acknowledgments ... 89-3-1
5. Recording of Instruments ... 89-5-1
6. Mississippi Plane Coordinate System ... 89-6-1
7. Landlord and Tenant ... 89-7-1
8. Residential Landlord and Tenant Act ... 89-8-1

TITLE 89. REAL AND PERSONAL PROPERTY (Cont'd)

			Beginning Section
	9.	Condominiums	89-9-1
	11.	Escheats	89-11-1
	12.	Uniform Disposition of Unclaimed Property Act	89-12-1
	13.	Party Fences	89-13-1
	15.	Party Walls	89-15-1
	17.	Salvage	89-17-1
	19.	Mississippi Conservation Easements	89-19-1
	21.	Uniform Disclaimer of Property Interests Act	89-21-1
	23.	Mississippi Uniform Environmental Covenants Act	89-23-1
	25.	Mississippi Uniform Statutory Rule Against Perpetuities	89-25-1

TITLE 91. TRUSTS AND ESTATES

CHAPTER	1.	Descent and Distribution	91-1-1
	3.	Uniform Simultaneous Death Law	91-3-1
	5.	Wills and Testaments	91-5-1
	7.	Executors and Administrators	91-7-1
	8.	Mississippi Uniform Trust Code	91-8-101
	9.	Trusts and Trustees	91-9-1
	11.	Fiduciary Security Transfers	91-11-1
	13.	Fiduciary Investments	91-13-1
	15.	Release of Powers of Appointment	91-15-1
	17.	Mississippi Principal and Income Act of 2013	91-17-101
	19.	Gifts to Minors [Repealed]	91-19-1
	20.	Transfers to Minors	91-20-1
	21.	Uniform Transfer-on-Death Security Registration Act	91-21-1

TITLE 93. DOMESTIC RELATIONS

CHAPTER	1.	Marriage	93-1-1
	3.	Husband and Wife	93-3-1
	5.	Divorce and Alimony	93-5-1
	7.	Annulment of Marriage	93-7-1
	9.	Bastardy	93-9-1
	11.	Enforcement of Support of Dependents	93-11-1
	12.	Enforcement of Child Support Orders from Foreign Jurisdictions	93-12-1
	13.	Guardians and Conservators	93-13-1
	14.	Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act	93-14-101
	15.	Termination of Rights of Unfit Parents	93-15-1

TITLE 93. DOMESTIC RELATIONS (Cont'd)

			Beginning Section
	16.	Grandparents' Visitation Rights	93-16-1
	17.	Adoption, Change of Name, and Legitimation of Children	93-17-1
	19.	Removal of Disability of Minority	93-19-1
	21.	Protection from Domestic Abuse	93-21-1
	22.	Uniform Interstate Enforcement of Domestic Violence Protection Orders	93-22-1
	23.	Uniform Child Custody Jurisdiction Act [Repealed]	93-23-1
	25.	Uniform Interstate Family Support Act	93-25-1
	27.	Uniform Child Custody Jurisdiction and Enforcement Act	93-27-101
	29.	Uniform Child Abduction Prevention Act	93-29-1

TITLE 95. TORTS

CHAPTER	1.	Libel and Slander	95-1-1
	3.	Nuisances	95-3-1
	5.	Trespass	95-5-1
	7.	Liability Exemption for Donors of Food	95-7-1
	9.	Liability Exemption for Volunteers and Sports Officials	95-9-1
	11.	Liability Exemption for Equine and Livestock Activities	95-11-1
	13.	Liability Exemption for Noise Pollution by Sport-shooting Ranges	95-13-1

TITLE 97. CRIMES

CHAPTER	1.	Conspiracy, Accessories and Attempts	97-1-1
	3.	Crimes Against the Person	97-3-1
	5.	Offenses Affecting Children	97-5-1
	7.	Crimes Against Sovereignty or Administration of Government	97-7-1
	9.	Offenses Affecting Administration of Justice	97-9-1
	11.	Offenses Involving Public Officials	97-11-1
	13.	Election Crimes	97-13-1
	15.	Offenses Affecting Highways, Ferries and Waterways	97-15-1
	17.	Crimes Against Property	97-17-1
	19.	False Pretenses and Cheats	97-19-1
	21.	Forgery and Counterfeiting	97-21-1
	23.	Offenses Affecting Trade, Business and Professions	97-23-1

TITLE 97. CRIMES (Cont'd)

		Beginning Section
25.	Offenses Affecting Railroads, Public Utilities and Carriers	97-25-1
27.	Crimes Affecting Public Health	97-27-1
29.	Crimes Against Public Morals and Decency	97-29-1
31.	Intoxicating Beverage Offenses	97-31-1
32.	Tobacco Offenses	97-32-1
33.	Gambling and Lotteries	97-33-1
35.	Crimes Against Public Peace and Safety	97-35-1
37.	Weapons and Explosives	97-37-1
39.	Dueling	97-39-1
41.	Cruelty to Animals	97-41-1
43.	Racketeer Influenced and Corrupt Organization Act (RICO)	97-43-1
44.	Mississippi Streetgang Act	97-44-1
45.	Computer Crimes and Identity Theft	97-45-1

TITLE 99. CRIMINAL PROCEDURE

CHAPTER	1.	General Provisions; Time Limitations; Costs	99-1-1
	3.	Arrests	99-3-1
	5.	Bail	99-5-1
	7.	Indictment	99-7-1
	9.	Process	99-9-1
	11.	Jurisdiction and Venue	99-11-1
	13.	Insanity Proceedings	99-13-1
	15.	Pretrial Proceedings	99-15-1
	17.	Trial	99-17-1
	18.	Office of State Public Defender	99-18-1
	19.	Judgment, Sentence, and Execution	99-19-1
	20.	Community Service Restitution	99-20-1
	21.	Fugitives From Other States	99-21-1
	23.	Peace Bonds	99-23-1
	25.	Forms	99-25-1
	27.	Proceedings for Intoxicating Beverage Offenses	99-27-1
	29.	Vagrancy Proceedings	99-29-1
	31.	Obscene Publications Proceedings [Repealed]	99-31-1
	33.	Prosecutions Before Justice Court Judges	99-33-1
	35.	Appeals	99-35-1
	36.	Victim Assistance Coordinator	99-36-1
	37.	Restitution to Victims of Crimes	99-37-1
	38.	Crime Victim's Escrow Account Act	99-38-1
	39.	Post-Conviction Proceedings	99-39-1
	40.	Indigent Appeals Division	99-40-1

TITLE 99. CRIMINAL PROCEDURE (Cont'd)

		Beginning Section
41.	Mississippi Crime Victims' Compensation Act ..	99-41-1
43.	Mississippi Crime Victims' Bill of Rights	99-43-1
45.	Statewide Automated Victim Information and Notification System	99-45-1
47.	Victim of Domestic Violence, Sexual Assault or Stalking Address Confidentiality Program	99-47-1
49.	Preservation and Accessibility of Biological Evidence	99-49-1

MISSISSIPPI CODE
1972

ANNOTATED

VOLUME EIGHTEEN A

TITLE 81

BANKS AND FINANCIAL INSTITUTIONS

Chapter 1. Department of Banking and Consumer Finance 81-1-1
Chapter 3. Incorporation and Organization of Banks 81-3-1
Chapter 5. General Provisions Relating to Banks and Banking 81-5-1
Chapter 7. Branch Banks 81-7-1
Chapter 8. Regional Banking Institutions 81-8-1
Chapter 9. Insolvent Banks 81-9-1
Chapter 11. Savings and Loan Associations [Repealed]
Chapter 12. Savings Associations Law 81-12-1
Chapter 13. Credit Unions 81-13-1
Chapter 14. Savings Bank Law 81-14-1
Chapter 15. Mississippi Rural Credit Law 81-15-1
Chapter 17. Farmers' Credit Associations 81-17-1
Chapter 18. Mississippi S.A.F.E. Mortgage Act 81-18-1
Chapter 19. Consumer Loan Broker Act 81-19-1
Chapter 20. Consumer Complaints and Disputes Against Mortgage Companies 81-20-1
Chapter 21. Insurance Premium Finance Companies 81-21-1
Chapter 22. Mississippi Debt Management Services Act [Repealed effective July 1, 2016] 81-22-1
Chapter 23. Interstate Bank Branching 81-23-1
Chapter 25. The Mississippi International Banking Act 81-25-1
Chapter 27. Multistate, State and Limited Liability Trust Institutions 81-27-1.001
Chapter 29. Lender Trade Name and Trademark Use 81-29-1

CHAPTER 1

Department of Banking and Consumer Finance

Sec.
81-1-1 through 81-1-53. Repealed.
81-1-54. Repealed.
81-1-55. Repealed.
81-1-57. Definitions.
81-1-59. Department of banking and consumer finance.
81-1-61. Commissioner of Banking and Consumer Finance; qualifications; term of office; vacancies.

81-1-63. Deputy commissioner; duties; qualifications; dismissal.
81-1-65. Employment of state banking examiners and other assistants; qualifications; compensation; removal; fingerprinting of all employees and applicants as condition of employment; limited use of criminal history record checks.
81-1-67. Oath of office and bond.
81-1-69. Salaries of commissioner and deputy commissioner.
81-1-71. Reimbursement of travel expenses; annual audit.
81-1-73. Seal of Department of Banking and Consumer Finance; sealed documents to be used in evidence; certified copies.
81-1-75. Furniture, fixtures, equipment and department expenses.
81-1-77. Borrowing money from or indorsing notes to state banks by officers or employees of department prohibited; penalties.
81-1-79. Attorney general as legal adviser; special counsel.
81-1-81. Examination of banks.
81-1-83. Powers and duties of officer making examination.
81-1-85. Witnesses' attendance may be compelled; penalty for false statements.
81-1-87. Testimony to be taken by stenographer; compensation of stenographer.
81-1-89. Records of proceedings; commissioner authorized to disclose certain information to and establish information sharing and exchange program with any government regulatory counterpart to the department.
81-1-91. Past due paper; certain items to be charged off.
81-1-93. Special examinations and special services; cost and expenses.
81-1-95. New statement may be ordered after finding of material changes or errors.
81-1-97. Call reports by banks; attestation.
81-1-99. Copy of call reports to be furnished on request; fee; penalties relating to issuance of reports and fees therefor.
81-1-100. Public availability of certain sections of federal evaluations of banks.
81-1-101. False statement of bank official; penalty.
81-1-103. Investigation of proposed federal cease and desist, suspension or removal orders to state chartered banks.
81-1-105. Injunction against commissioner by bank.
81-1-107. Assessment against banks for maintenance fund.
81-1-109. Disbursements from department maintenance fund.
81-1-111. Forms and record books to be supplied.
81-1-113. Annual report to legislature.
81-1-115. Fees for filing documents and issuing certificates.
81-1-117. Transfer of functions.
81-1-119. Notice of charges; temporary cease and desist order.
81-1-121. Bank violation; civil penalty.
81-1-123. Director, officer or employee violation; civil penalty.
81-1-125. Commissioner to issue orders for supervisory control with regard to banks.
81-1-127. Commissioner to issue notice of charges to employee who has participated in any violation.
81-1-129. Appeal of cease and desist order.
81-1-131. Fines and penalties; reimbursement.
81-1-133. Cumulative penalties, fines and remedies.
81-1-135. Consumer industry licensees required to participate in multistate licensing system.
81-1-137. Financial literacy programs for the public.

§§ 81-1-1 through 81-1-53. Repealed.

Repealed by Laws, 1980, ch. 312, § 40, eff from and after March 21, 1980.

[Codes, 1942, §§ 5153, 5162-5189; Laws, 1934, ch. 146; 1936, ch. 165; 1944, ch. 260, §§ 1-3; 1946, ch. 396, § 1; 1948, ch. 206, §§ 1-3; 1952, ch. 181, §§ 1-3; 1956, ch. 146; 1958, chs. 162-164, 166; 1966, chs. 240, 242-246, 445 §§ 10-12; 1970, chs. 269, 520; 1971, ch. 388; 1972, ch. 406, § 1]

Editor's Note — Function of Department of Bank Supervision transferred to Department of Banking and Consumer Finance, see §§ 81-1-57 et seq.

§ 81-1-54. Repealed.

Repealed by Laws, 2001, ch. 410, § 1, eff from and after July 1, 2001.

[Laws, 1979, ch. 301, § 50; Laws, 1982, ch. 303, § 1; Laws, 1990 Ex Sess, ch. 46, § 32; Laws, 1993, ch. 442, § 1; Laws, 1994, ch. 622, § 2; Laws, 1997, ch. 497, § 1, eff from and after July 1, 1997.]

Editor's Note — Former § 81-1-54 provided for the repeal of §§ 81-1-57 through 81-1-117.

§ 81-1-55. Repealed.

Repealed by Laws, 1980, ch. 312, § 40, eff from and after March 21, 1980.

[En Laws, 1978, ch. 310, § 1]

§ 81-1-57. Definitions.

(1) For the purposes of this chapter, the following words shall have the following meanings, unless the context otherwise requires:

(a) "Department" shall mean the Department of Banking and Consumer Finance established in Section 81-1-59.

(b) "Commissioner" shall mean the Commissioner of Banking and Consumer Finance as provided for in Section 81-1-61.

(c) "Board" shall mean the State Board of Banking Review established in Section 81-3-12.

(2) Wherever the following words appear in Title 81 of the Mississippi Code of 1972, or in any other laws of the State of Mississippi, they shall be construed to have the following meanings:

(a) "Department of Bank Supervision" or "department," when referring to the Department of Bank Supervision, shall be construed to mean the Department of Banking and Consumer Finance.

(b) "State Comptroller" or "comptroller," when referring to the office of State Comptroller of Banks, shall be construed to mean the Commissioner of Banking and Consumer Finance.

(c) "State Banking Board," "banking board" or "board," when referring to the State Board of Banking Review or the State Banking Board, shall be construed to mean the State Board of Banking Review.

SOURCES: Laws, 1980, ch. 312, § 2; reenacted, Laws, 1982, ch. 303, § 2; Laws, 1990 Ex Sess, ch. 46, § 1; Laws, 1993, ch. 442, § 2; Laws, 1994, ch. 622, § 3;

reenacted without change, Laws, 1997, ch. 497, § 2; reenacted without change, Laws, 2001, ch. 410, § 2, eff from and after July 1, 2001.

§ 81-1-59. Department of banking and consumer finance.

The Department of Banking and Consumer Finance is hereby created, and it is solely charged with the execution of all laws relating to corporations, carrying on a banking business in the State of Mississippi. The office of the Department of Banking and Consumer Finance shall be in the City of Jackson, Mississippi, and the Secretary of State shall provide suitable quarters therefor.

SOURCES: Laws, 1980, ch. 312, § 3; reenacted, Laws, 1982, ch. 303, § 3; Laws, 1990 Ex Sess, ch. 46, § 2; Laws, 1993, ch. 442, § 3; Laws, 1994, ch. 622, § 4; reenacted without change, Laws, 1997, ch. 497, § 3; reenacted without change, Laws, 2001, ch. 410, § 3, eff from and after July 1, 2001.

Cross References — State-chartered banks having and possessing the rights, powers, privileges, immunities, duties and obligations of a national bank having its principal place of business in this state, irrespective of any conflict with the provisions of this section, see § 81-5-1(9).

Provision defining the term "Department" for purposes of Chapter 8 ("Regional Banking Institutions") of this title, see § 81-8-1.

JUDICIAL DECISIONS

1.-10. [Reserved for future use.]
11. Under former § 81-1-1.

1.-10. [Reserved for future use.]

11. Under former § 81-1-1.

State Banking Act of 1914 held to be an exercise of police power and applicable to bank chartered by special prior act. Bank of Oxford v. Love, 111 Miss. 699, 72 So. 133, 8 A.L.R. 894 (1916), aff'd, 250 U.S. 603, 40 S. Ct. 22, 63 L. Ed. 1165, 17 Ohio L.R. 410 (1919).

RESEARCH REFERENCES

Am Jur. 10 Am. Jur. 2d, Banks and Financial Institutions § 104.

CJS. 9 C.J.S., Banks and Banking §§ 11-15.

§ 81-1-61. Commissioner of Banking and Consumer Finance; qualifications; term of office; vacancies.

The management, control and direction of the department shall be vested in the Commissioner of Banking and Consumer Finance, who shall be directly responsible for the proper functioning of the department. The commissioner shall be a banker who possesses not less than ten (10) consecutive years of active banking experience of which five (5) years' experience were performed in a major policy-making function as an executive officer, or shall be a person who possesses fifteen (15) years of active experience as a state or federal financial institutions examiner. The commissioner shall have been active in such major policy-making function or actively employed by the state or federal financial institutions regulatory authority within the previous five (5) years of his appointment. The commissioner shall be appointed by the Governor, with the advice and consent of the Senate, for a term of office of four (4) years, commencing on the day of appointment or on July 1 of the year in which the Governor is inaugurated, whichever comes first. The commissioner shall serve until his successor is appointed and qualified, but in no event shall he serve past the July 1 occurring after the end of the term of the Governor who appointed him, unless he shall be reappointed by the new Governor. If, for any cause, a vacancy occurs in the office of the commissioner, the Governor shall make the appointment for the unexpired term.

The commissioner shall be of good moral character, thoroughly understanding the theory and practice of banking, and must be a qualified elector of the State of Mississippi. The commissioner shall not be an officer, director or employee of any banking corporation during his entire term as commissioner, effective from the time of his appointment.

The commissioner may be removed by the Governor for good cause, but only after notice and a hearing.

SOURCES: Laws, 1980, ch. 312, § 4; reenacted, Laws, 1982, ch. 303, § 4; Laws, 1990 Ex Sess, ch. 46, § 3; Laws, 1993, ch. 442, § 4; Laws, 1993, ch. 587, § 1; reenacted and amended, Laws, 1994, ch. 622 § 5; reenacted without change, Laws, 1997, ch. 497, § 4; reenacted without change, Laws, 2001, ch. 410, § 4, eff from and after July 1, 2001.

Cross References — Duty of the Commissioner of Banking and Consumer Finance to disseminate current discount rates and indices and to record maximum permissible finance charges, see § 75-17-33.

State-chartered banks having and possessing the rights, powers, privileges, immunities, duties and obligations of a national bank having its principal place of business in this state, irrespective of any conflict with the provisions of this section, see § 81-5-1(9).

Provision defining the term "Commissioner" for purposes of Chapter 8 ("Regional Banking Institutions") of this title, see § 81-8-1.

RESEARCH REFERENCES

Am Jur. 10 Am. Jur. 2d, Banks and Financial Institutions § 104.

CJS. 9 C.J.S., Banks and Banking §§ 11-15.

§ 81-1-63. Deputy commissioner; duties; qualifications; dismissal.

The commissioner shall appoint a deputy commissioner, with the approval of the board, who shall perform such duties as may be required of him by the commissioner. If the office of the commissioner is vacant or if the commissioner is absent or unable to act, the deputy commissioner shall be the acting commissioner. The deputy commissioner shall have five (5) years' experience as a bank officer or employee, or three (3) years' experience as a bank president or managing officer of a bank, or five (5) years' experience as a state or federal bank examiner.

Copies of papers in the office of the department may be certified by the deputy commissioner, with the seal of the department affixed thereto, with like effect as though certified by the commissioner. The commissioner shall be responsible for all acts of the deputy commissioner, and may dismiss him at his pleasure, with the reasons therefor to be reported to the board within ten (10) days of the dismissal.

SOURCES: Laws, 1980, ch. 312, § 5; reenacted, Laws, 1982, ch. 303, § 5; Laws, 1990 Ex Sess, ch. 46, § 4; Laws, 1993, ch. 442, § 5; reenacted and amended, Laws, 1994, ch. 622, § 6; reenacted without change, Laws, 1997, ch. 497, § 5; reenacted without change, Laws, 2001, ch. 410, § 5, eff from and after July 1, 2001.

§ 81-1-65. Employment of state banking examiners and other assistants; qualifications; compensation; removal; fingerprinting of all employees and applicants as condition of employment; limited use of criminal history record checks.

The commissioner shall employ such assistants, to be known as state banking examiners, as may be necessary for the efficient operation of the department, to aid him in the discharge of the duties and responsibilities imposed upon him by law. The minimum qualifications for such employment shall be possession of a bachelor's degree from a recognized college or university, or three (3) years' experience as a bank examiner, bank officer or employee, small loan company officer or employee, or other consumer finance officer or employee and such other qualifications set out for banking examiners in the plan for the state personnel system. However, notwithstanding any provisions to the contrary, any person who is serving as a state banking examiner in the former Department of Bank Supervision on March 21, 1980, shall be qualified to serve as a state banking examiner in the department. The state bank examiners shall not, directly or indirectly, be connected with any banking business in Mississippi or elsewhere during their respective terms of office, after four (4) months from the time of qualifying as an examiner.

The commissioner may employ such additional employees as may be necessary to carry out those duties and responsibilities imposed upon him by law, who shall possess such qualifications set out for their particular position in the plan for the state personnel system.

No examiner or other employee related by consanguinity or affinity to the commissioner within the third degree computed according to the civil law shall be employed by him.

The examiners and all other persons employed by the commissioner under the provisions of this section shall be compensated as provided in the compensation plan for the state personnel system, unless otherwise provided by law. The compensation for such employees shall be payable monthly out of the funds of the department.

The commissioner shall be responsible for all acts of the examiners and the other employees. Any examiner or other employee may be dismissed only in accordance with the laws, rules and regulations applicable to the state personnel system.

As a condition of employment with the department, the commissioner shall require all employees and applicants for employment with the department to be fingerprinted to determine their suitability for employment as examiners or assistants as needed. If no disqualifying record is identified at the state level, the Department of Public Safety shall forward the fingerprints to the Federal Bureau of Investigation (FBI) for a national criminal history record check. The Department of Banking and Consumer Finance shall pay all of the costs in connection with the criminal history record check procedure. These record checks shall not be used by the Department of Banking and Consumer Finance for any purpose other than to determine suitability for employment with the department.

SOURCES: Laws, 1980, ch. 312, § 6; reenacted, Laws, 1982, ch. 303, § 6; Laws, 1990 Ex Sess, ch. 46, § 5; Laws, 1993, ch. 442, § 6; reenacted and amended, Laws, 1994, ch. 622, § 7; reenacted without change, Laws, 1997, ch. 497, § 6; reenacted without change, Laws, 2001, ch. 410, § 6; Laws, 2007, ch. 430, § 1, eff from and after passage (approved Mar. 22, 2007.)

Cross References — Prohibition against practice of nepotism, generally, see §§ 25-1-53, 25-1-55.

Salaries and compensation of public officers and employees, generally, see §§ 25-3-3 et seq.

Compensation of examiners for special examinations or other special services, see § 81-1-93.

Department maintenance fund, see § 81-1-107.

State-chartered banks having and possessing the rights, powers, privileges, immunities, duties and obligations of a national bank having its principal place of business in this state, irrespective of any conflict with the provisions of this section, see § 81-5-1(9).

RESEARCH REFERENCES

ALR. Validity, construction, and effect of state constitutional or statutory provision regarding nepotism in the public service. 11 A.L.R.4th 826.

CJS. 9 C.J.S., Banks and Banking §§ 11-15.

§ 81-1-67. Oath of office and bond.

The commissioner and the deputy commissioner each shall, before entering upon the discharge of their respective duties, take and subscribe the constitutional oath of office and shall execute to the State of Mississippi a bond in the sum of Fifty Thousand Dollars ($50,000.00) with a surety company authorized to do business in this state, to be delivered to and approved by the Treasurer of the State of Mississippi.

The state bank examiners shall, before entering upon the discharge of their duties, take and subscribe the constitutional oath of office and shall execute to the State of Mississippi a bond in the sum of Twenty Thousand

Dollars ($20,000.00) with a surety company authorized to do business in this state, to be delivered to and approved by the Treasurer of the State of Mississippi.

These bonds shall, by the terms thereof, be payable to the state, and shall be liable to the state in actions brought by the Attorney General on behalf of the state, and shall also be liable in actions brought by anyone aggrieved by breach thereof. The bonds shall be conditioned for the faithful and impartial performance of the duties of the particular office for which the bond was given, for the faithful and proper handling and accounting for all funds, and for the payment of all damages and costs which may accrue under provisions of law.

SOURCES: Laws, 1980, ch. 312, § 7; reenacted, Laws, 1982, ch. 303, § 7; Laws, 1990 Ex Sess, ch. 46, § 6; Laws, 1993, ch. 442, § 7; Laws, 1994, ch. 622, § 8; reenacted without change, Laws, 1997, ch. 497, § 7; reenacted without change, Laws, 2001, ch. 410, § 7, eff from and after July 1, 2001.

Cross References — Oath of office, see MS Const Art. 14, § 268.
Persons authorized to administer oaths, see § 11-1-1.
Person before whom oath of office may be taken, see § 25-1-9.
Surety bonds of state officials, generally, see § 25-1-13.

§ 81-1-69. Salaries of commissioner and deputy commissioner.

The salaries of the commissioner and the deputy commissioner shall be fixed by the Legislature, and shall be payable monthly out of the funds of the department.

SOURCES: Laws, 1980, ch. 312, § 8; reenacted, Laws, 1982, ch. 303, § 8; Laws, 1990 Ex Sess, ch. 46, § 7; Laws, 1993, ch. 442, § 8; Laws, 1993, ch. 587, § 2; Laws, 1994, ch. 622, § 9; reenacted without change, Laws, 1997, ch. 497, § 8; reenacted without change, Laws, 2001, ch. 410, § 8, eff from and after July 1, 2001.

Cross References — Department Maintenance Fund, see § 81-1-107.

§ 81-1-71. Reimbursement of travel expenses; annual audit.

The commissioner, all examiners and any employee required to travel shall be allowed expenses incident to the discharge of their official duties while away from their places of residence, and mileage for each mile necessarily traveled in the discharge of their official duties, as provided in Section 25-3-41. Such expenses shall be paid out of the department funds upon vouchers approved by the commissioner, and each voucher for expenses shall be accompanied by an itemized statement of the same.

The State Department of Audit shall make an annual audit of the books and records having to do with receipts and expenditures of funds of the department. The chief inspector shall file a copy of his report with the commissioner and the Governor, and insofar as is practicable, the commissioner shall incorporate the exhibits and schedules of receipts and disbursements for each year in his annual report to the Legislature.

SOURCES: Laws, 1980, ch. 312, § 9; reenacted, Laws, 1982, ch. 303, § 9; Laws, 1987, ch. 328; Laws, 1990 Ex Sess, ch. 46, § 8; Laws, 1993, ch. 442, § 9; Laws, 1994, ch. 622, § 10; reenacted without change, Laws, 1997, ch. 497, § 9; reenacted without change, Laws, 2001, ch. 410, § 9, eff from and after July 1, 2001.

Editor's Note — This section was derived in part from former § 81-5-15 (Codes, 1942, § 5167; Laws, 1934, ch. 146; 1948, ch. 206, § 2; 1952, ch. 181, § 2; 1956, ch. 146; 1958, ch. 243, § 1; 1966, ch. 445, § 11; 1970, ch 269, § 1).

Cross References — Department of Audit, generally, see §§ 7-7-201 et seq.

Department Maintenance Fund, see § 81-1-107.

Annual report to Legislature, see § 81-1-113.

§ 81-1-73. Seal of Department of Banking and Consumer Finance; sealed documents to be used in evidence; certified copies.

The department shall have a seal which shall be in the form of a circle with the image of an eagle, with thirteen (13) stars over the head, in the center, and about the margin at the bottom shall appear the words "State of Mississippi"; and about the margin at the top shall appear the words "Department of Banking and Consumer Finance."

Every certificate and other official paper executed by the department under authority of law and sealed with the seal of office shall be used as evidence in all courts, investigations and proceedings authorized by law, and may be recorded in the same manner and with like effect as a deed. All copies of papers in the office of the department, certified by the commissioner, or certified by an examiner of the department, and bearing the seal shall be accepted in all matters equally and with like effect as the original. No original papers, except with the consent of the commissioner, shall at any time be removed from the files of the department, and for every purpose, a copy of such original, certified as above set out, is hereby made the equivalent of such original.

SOURCES: Laws, 1980, ch. 312, § 10; reenacted, Laws, 1982, ch. 303, § 10; Laws, 1990 Ex Sess, ch. 46, § 9; Laws, 1993, ch. 442, § 10; Laws, 1994, ch. 622, § 11; reenacted without change, Laws, 1997, ch. 497, § 10; reenacted without change, Laws, 2001, ch. 410, § 10, eff from and after July 1, 2001.

Editor's Note — This section was derived from former § 81-1-3 (Codes, 1942, § 5163; Laws, 1934, ch. 146).

Cross References — Recording of instruments, see § 89-5-25.

§ 81-1-75. Furniture, fixtures, equipment and department expenses.

The department shall be supplied with all necessary office furniture, fixtures and equipment, which shall be purchased by the commissioner and paid for out of the department maintenance fund on voucher signed by the commissioner. All necessary postage, stationery, expressage, books, telephone and telegraph messages, printing expenses and all premiums on bonds and all other office expenses of the department shall be allowed and paid for in the same manner as the office equipment and fixtures.

SOURCES: Laws, 1980, ch. 312, § 11; reenacted, Laws, 1982, ch. 303, § 11; Laws, 1990 Ex Sess, ch. 46, § 10; Laws, 1993, ch. 442, § 11; Laws, 1994, ch. 622, § 12; reenacted without change, Laws, 1997, ch. 497, § 11; reenacted without change, Laws, 2001, ch. 410, § 11, eff from and after July 1, 2001.

Editor's Note — This section was derived from former § 81-1-17 (Codes, 1942, § 5168; Laws, 1934, ch. 146).

Cross References — Department Maintenance Fund, see § 81-1-107.

§ 81-1-77. Borrowing money from or indorsing notes to state banks by officers or employees of department prohibited; penalties.

No officer or employee of the department shall be permitted to borrow money from any state bank directly or indirectly or to indorse any note to any state bank. Any such officer or employee who borrows any money from any state bank or indorses any note to any state bank and any officer or employee of any state bank who makes any such loan to any officer or employee of the department or accepts the indorsement of any officer or employee of the department on any note to any state bank shall be guilty of a misdemeanor and, upon conviction of such offense, shall be imprisoned for not more than six (6) months in the county jail, or fined not more than One Thousand Dollars ($1,000.00), or both. Each renewal of any loan or indorsement forbidden by this section shall constitute a separate offense.

SOURCES: Laws, 1980, ch. 312, § 12; reenacted, Laws, 1982, ch. 303, § 12; Laws, 1990 Ex Sess, ch. 46, § 11; Laws, 1993, ch. 442, § 12; Laws, 1994, ch. 622, § 13; reenacted without change, Laws, 1997, ch. 497, § 12; reenacted without change, Laws, 2001, ch. 410, § 12, eff from and after July 1, 2001.

Editor's Note — This section was derived from former § 81-1-19 (Codes, 1942, § 5170; Laws, 1934, ch. 146).

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

ALR. Construction and application of 18 USCS § 213 punishing acceptance of loan or gratuity by bank examiner. 19 A.L.R. Fed. 340.

§ 81-1-79. Attorney general as legal adviser; special counsel.

The Attorney General shall advise the department on all legal matters. However, in case of litigation involving the department, or in the event of necessity for legal assistance in connection with the administration of the department, the commissioner may, with the consent and approval of the Attorney General, employ special counsel to assist in handling the same.

SOURCES: Laws, 1980, ch. 312, § 13; reenacted, Laws, 1982, ch. 303, § 13; Laws, 1990 Ex Sess, ch. 46, § 12; Laws, 1993, ch. 442, § 13; Laws, 1994, ch. 622, § 14; reenacted without change, Laws, 1997, ch. 497, § 13; reenacted without change, Laws, 2001, ch. 410, § 13, eff from and after July 1, 2001.

Editor's Note — This section was derived from former § 81-1-21 (Codes, 1942, § 5171; Laws, 1934, ch. 146, § 11; 1944, ch. 260, §§ 1-3).

Cross References — Powers and duties of Attorney General, generally, see §§ 7-5-1 et seq.

§ 81-1-81. Examination of banks.

It shall be the duty of the commissioner to apportion the work of examining banks among the examiners in such a way that each bank, under the provisions of law, shall be examined at least once during an eighteen-month period and more often, if necessary, in the discretion of the commissioner, at irregular intervals and without prior notice. However, neither the commissioner nor any examiner shall examine one (1) bank twice in succession unless the commissioner, for cause, so determines. In the event the commissioner's office, because of work load or other good sufficient cause, is unable to conduct an examination of a bank as provided for in this section, the commissioner is hereby authorized to accept the examination of any state bank performed by the Federal Deposit Insurance Corporation or the Federal Reserve Bank in lieu of the examination provided for in this section. However, in no case shall the commissioner be authorized to accept any such examination of any state bank performed by either the Federal Deposit Insurance Corporation or the Federal Reserve Bank for any two (2) consecutive eighteen-month periods.

SOURCES: Laws, 1980, ch. 312, § 14; reenacted, Laws, 1982, ch. 303, § 14; Laws, 1990 Ex Sess, ch. 46, § 13; Laws, 1993, ch. 442, § 14; Laws, 1994, ch. 622, § 15; Laws, 1995, ch. 308, § 10; reenacted without change, Laws, 1997, ch. 497, § 14; reenacted without change, Laws, 2001, ch. 410, § 14, eff from and after July 1, 2001.

Editor's Note — This section was derived from former § 81-1-23 (Codes, 1942, § 5174; Laws, 1934, ch. 146; 1936, ch. 165; 1946, ch. 396, § 1; 1966, ch. 245, § 1).

Cross References — Examination of credit unions by commissioner of banking and consumer finance, see § 81-13-17.

Out-of-state trust institution examinations, see §81-27-2.301.

RESEARCH REFERENCES

Am Jur. 10 Am. Jur. 2d, Banks and Financial Institutions §§ 108, 1192, 1194.

CJS. 9 C.J.S., Banks and Banking § 28.

§ 81-1-83. Powers and duties of officer making examination.

At each examination, the commissioner or an examiner may examine the cash, bills, collaterals and securities, books of account, the condition and affairs of the bank, the mode of conducting and managing the affairs of the bank, the action of its directors, and the investment of the funds of the bank. The commissioner or an examiner shall have power to examine the directors and all other persons under oath as to the value of all collaterals, securities and other assets of the bank. Any officer of a bank refusing to the commissioner or examiner any of the papers, securities, the books of account or cash of a bank shall subject such bank to liquidation as provided by law.

The commissioner or an examiner may call for statements from all correspondent banks and all other persons or corporations showing a balance on the books of the bank at each examination.

The commissioner, examiners, or any other employee of the department shall not reproduce a copy of any information in the possession of any bank pertaining to the names of the stockholders of such bank or the amount of shares owned by such stockholders, nor shall the commissioner, examiners or any other employee of the department remove such stockholder information from the confines of the bank, any provision contained herein to the contrary notwithstanding.

SOURCES: Laws, 1980, ch. 312, § 15; reenacted, Laws, 1982, ch. 303, § 15; Laws, 1990 Ex Sess, ch. 46, § 14; Laws, 1993, ch. 442, § 15; Laws, 1994, ch. 320, § 1; reenacted and amended, Laws, 1994, ch. 622, § 16; reenacted without change, Laws, 1997, ch. 497, § 15; reenacted without change, Laws, 2001, ch. 410, § 15, eff from and after July 1, 2001.

Editor's Note — This section was derived from former § 81-1-25 (Codes, 1942, § 5175; Laws, 1934, ch. 146; 1966, ch. 246, § 1).

Cross References — Insolvent banks, generally, see §§ 81-9-1 et seq.

Out-of-state trust institution examinations, see § 81-27-2.301.

JUDICIAL DECISIONS

1.-10. [Reserved for future use.]
11. Under former § 81-1-25.

1.-10. [Reserved for future use.]

11. Under former § 81-1-25.

Officers' and directors' contract to pay all bank's losses, to prevent assessment against stockholders, held not contrary to public policy nor statute; nor did such contract prevent banking department from exercising statutory powers. Love v. Dampeer, 159 Miss. 430, 132 So. 439, 73 A.L.R. 1376 (1931).

Superintendent of banks, under former statute, became entitled to all legal rights and equities of bank in liquidation, and could sue thereon for benefit of depositors, creditors, and stockholders. Love v. Dampeer, 159 Miss. 430, 132 So. 439, 73 A.L.R. 1376 (1931).

RESEARCH REFERENCES

ALR. Construction and application of 18 USCS § 213 punishing acceptance of loan or gratuity by bank examiner. 19 A.L.R. Fed. 340.

Am Jur. 10 Am. Jur. 2d, Banks and Financial Institutions §§ 108, 1192, 1194.

CJS. 9 C.J.S., Banks and Banking §§ 11-15.

§ 81-1-85. Witnesses' attendance may be compelled; penalty for false statements.

The commissioner or an examiner shall have the authority to issue subpoenas for witnesses and compel their attendance before him in any and all matters connected with the duties of his office, and for failure to attend or testify, witnesses may be fined by him for contempt. He may invoke the process of the appropriate chancery court to compel such testimony and the production of all necessary papers, and orders therefor may be had either in termtime or vacation upon two (2) days' notice to the opposite party.

Sheriffs, constables and marshals holding commissions in this state shall serve, and be entitled to regular fees for serving such subpoenas. For failing to execute or return such process they shall be liable for the same penalties prescribed by law for failure to execute any like process issued by the courts of this state.

The commissioner or an examiner shall have the authority to administer oaths and to examine under oath the officers, agents, clerks, employees and stockholders of any bank, or any other person touching the matters into which he is directed to examine by law. Any person who willfully makes any false statement under oath in such examination shall be deemed guilty of perjury, and upon conviction thereof shall be punished as provided by law. If any officer, agent, clerk or stockholder of any bank, when under oath, willfully misrepresents in any manner to the commissioner, an examiner, or his assistant, the condition of the bank, or any of its property, or purposely misleads the commissioner or any examiner, or makes false statements regarding the condition of the bank, or any part of its business, such person shall be deemed guilty of a misdemeanor and upon conviction thereof in any court of competent jurisdiction, shall be fined not less than One Thousand Dollars ($1,000.00) nor more than Two Thousand Five Hundred Dollars ($2,500.00) or imprisoned in the county jail not less than six (6) months nor more than one (1) year, or by both such fine and imprisonment.

SOURCES: Laws, 1980, ch. 312, § 16; reenacted, Laws, 1982, ch. 303, § 16; Laws, 1990 Ex Sess, ch. 46, § 15; Laws, 1993, ch. 442, § 16; Laws, 1994, ch. 622, § 17; reenacted without change, Laws, 1997, ch. 497, § 16; reenacted without change, Laws, 2001, ch. 410, § 16, eff from and after July 1, 2001.

Editor's Note — This section derived from former § 81-1-27 (Codes, 1942, § 5176; Laws, 1934, ch. 146).

Cross References — Subpoenas for witnesses, generally, see § 13-3-93.

Liability of sheriff for failure to serve process, see § 19-25-37.

Fees of sheriffs, see § 25-7-19.

Fees of constables and marshals, see § 25-7-27.

Prohibition on false statements by bank officials and penalty therefor, see § 81-1-101.

Procedures for approval of certificate of incorporation, see § 81-3-13.

Trust company formation hearings, power to compel attendance of witnesses and transcription, see § 81-27-4.103.

Statutory penalty for perjury, see § 97-9-61.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

Am Jur. 81 Am. Jur. 2d, Witnesses §§ 20-25.

CJS. 98 C.J.S., Witnesses § 26.

§ 81-1-87. Testimony to be taken by stenographer; compensation of stenographer.

The commissioner or an examiner, in all cases where the testimony of witnesses is to be preserved, shall have the right to have the case taken down and transcribed by a stenographer, and the stenographer so employed shall be duly sworn. The stenographer's certificate that the transcript of such evidence is correct, together with the official certificate of the commissioner or examiner that he has read the same and that it is, in his opinion, correct, shall entitle such transcript, or a certified copy thereof, to be received in evidence as relevant, material and competent. Such stenographer shall be paid at the same rates as that then currently in effect for similar duties performed by the chancery court reporter for the county in which the testimony of the witnesses is to be taken and preserved. The stenographer shall be paid out of the department maintenance fund on voucher approved by the commissioner or examiner employing such stenographer, accompanied with an itemized statement of services rendered.

SOURCES: Laws, 1980, ch. 312, § 17; reenacted, Laws, 1982, ch. 303, § 17; Laws, 1990 Ex Sess, ch. 46, § 16; Laws, 1993, ch. 442, § 17; Laws, 1994, ch. 622, § 18; reenacted without change, Laws, 1997, ch. 497, § 17; reenacted without change, Laws, 2001, ch. 410, § 17, eff from and after July 1, 2001.

Editor's Note — This section was derived from former § 81-1-29 (Codes, 1942, § 5177; Laws, 1934, ch. 146; 1966, ch. 240, § 1).

Cross References — Department Maintenance Fund, see § 81-1-107.

Trust company formation hearings, power to compel attendance of witnesses and transcription, see § 81-27-4.103.

§ 81-1-89. Records of proceedings; commissioner authorized to disclose certain information to and establish information sharing and exchange program with any government regulatory counterpart to the department.

(1) The commissioner, examiners and all employees of the department shall keep as records of their office proper books showing all acts, matters and

things done by them. Except when required in legal proceedings or as authorized under subsection (2) of this section, none of them shall disclose to any person, official or otherwise, any fact or information obtained in the course of the performance of their duties, except so far as it may be incumbent upon them under the law, to report to the commissioner, or to make public records and publish the same. The commissioner may provide to members of the public the information authorized under Section 81-1-100 without being in violation of this section.

(2) The commissioner may disclose to any federal, state or foreign government regulatory counterpart to the department any and all information contained during the course of his official duties as regulator and/or licensor of all financial entities charged to him by statute on December 31, 2005, as well as any others established by statute after that date. The commissioner may establish by agreement an information sharing and exchange program with the same governmental entities to promote and help reduce duplicative and burdensome filings, examinations and any other regulatory requirements by which each party maintains the confidentiality of information that is considered confidential under applicable state and federal statutes.

SOURCES: Laws, 1980, ch. 312, § 18; reenacted, Laws, 1982, ch. 303, § 18; Laws, 1990 Ex Sess, ch. 46, § 17; reenacted and amended, Laws, 1993, ch. 442, § 18; reenacted, Laws, 1994, ch. 622, § 19; reenacted without change, Laws, 1997, ch. 497, § 18; reenacted without change, Laws, 2001, ch. 410, § 18; Laws, 2006, ch. 404, § 1, eff from and after passage (approved Mar. 15, 2006.)

Editor's Note — This section was derived from former § 81-1-31 (Codes, 1942, § 5178; Laws, 1934, ch. 146).

Cross References — Furnishing copies of published reports by banks, see § 81-1-99.

State-chartered banks having and possessing the rights, powers, privileges, immunities, duties and obligations of a national bank having its principal place of business in this state, irrespective of any conflict with the provisions of this section, see § 81-5-1(9).

§ 81-1-91. Past due paper; certain items to be charged off.

In all bank examinations no bank shall be allowed credit in excess of its sound value for a note or security of which the principal and interest is over twelve (12) months past due; nor for any bond in excess of the real value thereof; nor for any stock of its own held more than twelve (12) months; nor for any unsecured overdrafts that may have existed for a greater period than thirty (30) days next preceding it, except that the period shall be ninety (90) days for unsecured overdrafts upon which interest is being charged if the bank has a written policy authorizing such overdrafts for not more than ninety (90) days. Only such overdrafts shall be considered as secure as are advanced against products or actual existing values evidenced by warehouse receipts or bills of lading, against bills of exchange drawn in good faith against actual existing values, or against funds on deposit by the depositor whose account is overdrawn, and who has pledged those funds as security f or such overdraft, and in making up the statement of the condition of such bank any such item shall be charged off (but if desired a note shall be appended giving details thereof). But the discretion of the commissioner or examiner may be exercised in cases of estates in litigation or administration, and in pending suits, if the security affected thereby is ample, in the opinion of the commissioner or examiner making such examination.

SOURCES: Laws, 1980, ch. 312, § 19; reenacted, Laws, 1982, ch. 303, § 19; Laws, 1984, ch. 325; Laws, 1990 Ex Sess, ch. 46, § 18; Laws, 1993, ch. 442, § 19; Laws, 1994, ch. 622, § 20; reenacted without change, Laws, 1997, ch. 497, § 19; reenacted without change, Laws, 2001, ch. 410, § 19, eff from and after July 1, 2001.

Editor's Note — This section was derived from former § 81-1-33 (Codes, 1942, § 5179; Laws, 1934, ch. 146).

§ 81-1-93. Special examinations and special services; cost and expenses.

The commissioner may make special examinations or render special services to banks, either at the request of banks desiring same, or at his own instance. The commissioner shall have discretion to decide whether any examinations or services are sufficiently urgent, out of routine, or extraordinary to be denominated special examinations or services. When any special examination or services are rendered and so denominated by the commissioner he shall charge the bank so examined or served the cost based on the average daily cost of all examiners of the department plus actual and necessary expenses. The bank so receiving such special examination or services shall pay the per diem and expenses of each appointed examiner performing the work to the commissioner, who in turn will pay the amount into the department maintenance fund and disburse to the examiner directly the amount of his services. An examiner who is on the state payroll may perform such services but the funds so derived from his services shall be paid into the department maintenance fund, and no examiner shall be allowed to draw from a salary and expenses from both the bank and the state.

SOURCES: Laws, 1980, ch. 312, § 20; reenacted, Laws, 1982, ch. 303, § 20; Laws, 1990 Ex Sess, ch. 46, § 19; reenacted, Laws, 1993, ch. 442, § 20; Laws, 1994, ch. 622, § 21; reenacted without change, Laws, 1997, ch. 497, § 20; reenacted without change, Laws, 2001, ch. 410, § 20, eff from and after July 1, 2001.

Editor's Note — This section was derived from former § 81-1-35 (Codes, 1942, § 5180; Laws, 1934, ch. 146; 1971, ch. 388, § 1).

Cross References — Compensation of examiners, generally, see § 81-1-65.
Department Maintenance Fund, see § 81-1-107.

§ 81-1-95. New statement may be ordered after finding of material changes or errors.

If, upon the completion of any examination, the commissioner or an examiner finds that the last public statement of the bank is materially wrong, or that the condition of the bank has materially changed since the last public statement, he may order the bank to publish a new statement based upon the findings of his examination. For failure to promptly publish such statement, the bank shall be liable for a penalty of Five Hundred Dollars ($500.00) for which suit shall be brought by the commissioner for the use of the department if not paid within ten (10) days.

SOURCES: Laws, 1980, ch. 312, § 21; reenacted, Laws, 1982, ch. 303, § 21; Laws, 1990 Ex Sess, ch. 46, § 20; Laws, 1993, ch. 442, § 21; Laws, 1994, ch. 622, § 22; reenacted without change, Laws, 1997, ch. 497, § 21; reenacted without change, Laws, 2001, ch. 410, § 21, eff from and after July 1, 2001.

Cross References — Statements or reports by banks, generally, see § 81-1-97.

§ 81-1-97. Call reports by banks; attestation.

The commissioner shall call upon each state bank for the reports required in this section. Such calls shall be made by the commissioner in writing by letter or other similar means of written communications for the same dates and as often as calls are issued by the Comptroller of the Currency for the United States for reports from national banks. The commissioner shall prescribe the forms for such reports. The reports shall be sworn to by either the president, vice president or cashier of the bank making them, attested by not less than two (2) of the board of directors, and shall exhibit in detail, under appropriate heads, the total resources and total liabilities of the bank on the day specified by the commissioner. Banks shall transmit to the department such call reports within a time limitation established by regulation by the commissioner; however, such time limitation cannot exceed that set by the Federal Deposit Insurance Corporation for state insured banks. For any failure or delay in furnishing this report, the president, vice president or cashier of any such bank, so in default, and the members of the board of directors of the bank refusing to attest the report, shall be subject to an administrative fine, which may be imposed by the commissioner, of Fifty Dollars ($50.00) a day for each day while in such default.

SOURCES: Laws, 1980, ch. 312, § 22; Laws, 1982, ch. 303, § 22; Laws, 1982, ch. 342, § 1; Laws, 1990 Ex Sess, ch. 46, § 21; Laws, 1993, ch. 442, § 22; Laws, 1994, ch. 320 § 10; reenacted and amended, Laws, 1994, ch. 622, § 23; Laws, 1995, ch. 308, § 1; reenacted without change, Laws, 1997, ch. 497, § 22; reenacted without change, Laws, 2001, ch. 410, § 22, eff from and after July 1, 2001.

Editor's Note — This section was derived from former § 81-1-39 (Codes, 1942, § 5182; Laws, 1934, ch. 146; 1978, ch. 308, § 1).
Cross References — Furnishing copies of statements by department, see § 81-1-99.

Penalty for false statements, see § 81-1-101.

State-chartered banks having and possessing the rights, powers, privileges, immunities, duties and obligations of a national bank having its principal place of business in this state, irrespective of any conflict with the provisions of this section, see § 81-5-1(9).

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

ALR. Application of requirement that newspaper be locally published for official notice publication. 85 A.L.R.4th 581.

Am Jur. 10 Am. Jur. 2d, Banks and Financial Institutions §§ 108, 1192, 1194.

CJS. 9 C.J.S., Banks and Banking § 28.

§ 81-1-99. Copy of call reports to be furnished on request; fee; penalties relating to issuance of reports and fees therefor.

A copy of the call reports of any bank shall be furnished to any person or corporation requesting the same for a reasonable fee prescribed by the commissioner, which shall be collected by the commissioner and shall be paid into the department maintenance fund. If the commissioner fails or refuses to furnish copies of the report when so requested and tendered the proper fee; or if he fails to account for any such fees received by him; or if any person other than the commissioner, deputy commissioner, an examiner, or assistant furnishes any copy of such bank report to anyone, whether for a consideration or without consideration, such person shall be guilty of a misdemeanor and shall be fined not less than Fifty Dollars ($50.00) or be imprisoned not more than one (1) month in the county jail, or both. However, this section shall not be construed to prevent any officer of the bank from furnishing to anyone a statement of such bank.

SOURCES: Laws, 1980, ch. 312, § 23; reenacted, Laws, 1982, ch. 303, § 23; Laws, 1990 Ex Sess, ch. 46, § 22; Laws, 1993, ch. 442, § 23; Laws, 1994, ch. 622, § 24; Laws, 1995, ch. 308, § 2; reenacted without change, Laws, 1997, ch. 497, § 23; reenacted without change, Laws, 2001, ch. 410, § 23, eff from and after July 1, 2001.

Editor's Note — This section was derived from former § 81-1-41 (Codes, 1942, § 5183; Laws, 1934, ch. 146).

Cross References — State-chartered banks having and possessing the rights, powers, privileges, immunities, duties and obligations of a national bank having its principal place of business in this state, irrespective of any conflict with the provisions of this section, see § 81-5-1(9).

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 81-1-100. Public availability of certain sections of federal evaluations of banks.

(1) The commissioner shall obtain each year from the appropriate federal financial supervisory agency or agencies the public sections of the written evaluations prepared pursuant to 12 USCS Section 2906 of the Community Reinvestment Act, as amended (12 USCS Section 2901 et seq.), of each state bank and national bank located in Mississippi and each bank holding company that controls any bank located in Mississippi. Once each year the commissioner shall publish in some newspaper having a general circulation in the state a statement that the public section of the written evaluation prepared pursuant to 12 USCS Section 2906 of the Community Reinvestment Act, as amended (12 USCS Section 2901 et seq.), of each such bank and bank holding company is maintained in the office of the commissioner and will be made available for inspection to any person upon request during business hours, and that copies of all or part of any evaluation will be furnished to any person upon request for a reasonable copying fee prescribed by the commissioner.

(2) For the purposes of this section, the term "appropriate federal financial supervisory agency" shall have the same meaning as the definition in 12 USCS Section 2902.

SOURCES: Laws, 1993, ch. 442, § 24; reenacted, Laws, 1994, ch. 622, § 25; reenacted without change, Laws, 1997, ch. 497, § 24; reenacted without change, Laws, 2001, ch. 410, § 24, eff from and after July 1, 2001.

Cross References — Disclosures under this section are expressly excepted from the prohibitions of § 81-1-89.

Federal Aspects — Community Reinvestment Act, see 12 USCS § 2901 et seq.

§ 81-1-101. False statement of bank official; penalty.

Any officer, director, cashier, agent, clerk or stockholder of any bank, other than a national bank, doing business in the State of Mississippi, who willfully and knowingly subscribes to or makes any false report or any false statement or entry in the books of such bank, or who knowingly subscribes or exhibits any false writing or paper with the intent to deceive any person as to the condition of such bank shall be fined not more than One Thousand Dollars ($1,000.00) or imprisoned in the Penitentiary not more than three (3) years, or both.

SOURCES: Laws, 1980, ch. 312, § 24; reenacted, Laws, 1982, ch. 303, § 24; Laws, 1990 Ex Sess, ch. 46, § 23; Laws, 1993, ch. 442, § 25; Laws, 1994, ch. 622, § 26; reenacted without change, Laws, 1997, ch. 497, § 25; reenacted without change, Laws, 2001, ch. 410, § 25, eff from and after July 1, 2001.

Editor's Note — This section was derived from former § 81-1-43 (Codes, 1942, § 5184; Laws, 1934, ch. 146).

Cross References — State-chartered banks having and possessing the rights, powers, privileges, immunities, duties and obligations of a national bank having its principal place of business in this state, irrespective of any conflict with the provisions of this section, see § 81-5-1(9).

JUDICIAL DECISIONS

1.-10. [Reserved for future use.]
11. Under former § 81-1-43.

1.-10. [Reserved for future use.]

11. Under former § 81-1-43.

Indictment charging bank officials with publishing false statement as to bank's condition held demurrable because allegations were too general. State v. Cahn, 171 Miss. 458, 158 So. 202 (1934).

Statute prohibiting bank officials from publishing false statement as to bank's condition covers many different kinds of acts, and indictment thereunder should select particular act and give specific information apprising accused of nature of crime. State v. Cahn, 171 Miss. 458, 158 So. 202 (1934).

RESEARCH REFERENCES

ALR. What constitutes a "material" fact for purposes of 18 USCS § 1001, relating to falsifying or concealing facts in matter within jurisdiction of United States department or agency. 49 A.L.R. Fed. 622.

Am Jur. 10 Am. Jur. 2d, Banks and Financial Institutions §§ 446 et seq.

CJS. 9 C.J.S., Banks and Banking §§ 777, 778.

§ 81-1-103. Investigation of proposed federal cease and desist, suspension or removal orders to state chartered banks.

If the commissioner receives notice from the United States or any agency or instrumentality thereof having authority to issue cease and desist, removal or suspension orders to state-chartered banks supervised by the department, of its intention to issue any such cease and desist, removal or suspension order to any state-chartered bank, then the commissioner is hereby authorized and empowered to investigate the act, cause or basis asserted for the issuance of such proposed order.

If such investigation shall disclose, in the opinion and judgment of the commissioner, that the act, cause or basis complained of has occurred, and that it is detrimental to the safety and welfare of the depositors or stockholders of the bank and contrary to the public interest, and if the act, cause or basis complained of shall not be remedied immediately, then the commissioner may give notice to the board of directors of the bank of the charges together with his concurrence or exceptions thereto and the remedies for the same. Failure of the board of directors to comply with the requirements of the commissioner within thirty (30) days from the date of notice shall render the board of directors in default thereupon. Thereafter the commissioner may remove any officer, director or other person responsible for the noncompliance, or he may notify the appropriate federal agency or instrumentality to proceed under the federal statute or regulation.

SOURCES: Laws, 1980, ch. 312, § 25; reenacted, Laws, 1982, ch. 303, § 25; Laws, 1990 Ex Sess, ch. 46, § 24; Laws, 1993, ch. 442, § 26; Laws, 1994, ch. 622, § 27; reenacted without change, Laws, 1997, ch. 497, § 26; reenacted without change, Laws, 2001, ch. 410, § 26, eff from and after July 1, 2001.

Editor's Note — This section was derived from former § 81-1-44 (Codes, 1942, § 5191.5; Laws, 1972, ch. 406, § 1).

Cross References — State-chartered banks having and possessing the rights, powers, privileges, immunities, duties and obligations of a national bank having its principal place of business in this state, irrespective of any conflict with the provisions of this section, see § 81-5-1(9).

§ 81-1-105. Injunction against commissioner by bank.

The commissioner may be enjoined in chancery court by any bank for abuse or misuse of any discretion or duty imposed upon him by the provisions of Title 81 of the Mississippi Code of 1972, or any other laws of the state.

SOURCES: Laws, 1980, ch. 312, § 26; reenacted, Laws, 1982, ch. 303, § 26; Laws, 1990 Ex Sess, ch. 46, § 25; Laws, 1993, ch. 442, § 27; Laws, 1994, ch. 622, § 28; reenacted without change, Laws, 1997, ch. 497, § 27; reenacted without change, Laws, 2001, ch. 410, § 27, eff from and after July 1, 2001.

Editor's Note — This section was derived from former § 81-1-45 (Codes, 1942, § 5185; Laws, 1934, ch. 146).

Cross References — State-chartered banks having and possessing the rights, powers, privileges, immunities, duties and obligations of a national bank having its principal place of business in this state, irrespective of any conflict with the provisions of this section, see § 81-5-1(9).

§ 81-1-107. Assessment against banks for maintenance fund.

Every bank organized under the laws of this state engaging in the business of a commercial bank, trust company or any combination thereof, is assessed for each year the sum of Seventy-five Dollars ($75.00) and every such corporation whose total assets exceed One Hundred Thousand Dollars ($100,000.00) shall further pay in addition to the minimum assessment of Seventy-five Dollars ($75.00), Fifty Cents (50¢) for each One Thousand Dollars ($1,000.00) or fraction thereof of assets in excess of One Hundred Thousand Dollars ($100,000.00). All money accruing from such assessment shall be used for the maintenance of the department.

The commissioner shall, during the month of January in each year, or as soon thereafter as practicable, prepare a statement of the assessments due under this section based upon the total assets of each such corporation, as shown by its last report, which shall be paid as called for by the commissioner. He shall send to each such corporation a statement of the amount due by it, which shall specify how the same shall be payable. The assessment shall be due and payable in accordance with the statement so furnished and the installments thereof shall be paid within ten (10) days after the date fixed for their payment. Such assessment shall constitute a lien on the assets of each bank until paid. Any such corporation failing to make payment within ten (10) days as herein provided shall be liable to a penalty of ten percent (10%) of the amount in default for each day thereafter. All assessments and penalties provided in this section shall be payable to the commissioner and when collected by him shall be delivered to the State Treasurer to be placed to the credit of the maintenance fund of the department. The commissioner shall give a receipt for all money received by him and shall take a receipt from the State Treasurer for all money delivered to him. In making any call for the assessment levied by this section the commissioner shall estimate the cost of maintaining the department for the current year, and if the assessments hereby levied shall appear to produce more than such estimate, he shall reduce accordingly the Fifty Cents (50¢) per One Thousand Dollars ($1,000.00) of assets assessment provided in this section. The cash balance remaining in the maintenance fund of the department at the end of any one (1) fiscal year shall be credited to and reduce the assessments of the following fiscal year on a pro rata basis.

SOURCES: Laws, 1980, ch. 312, § 27; reenacted, Laws, 1982, ch. 303, § 27; Laws, 1990 Ex Sess, ch. 46, § 26; Laws, 1993, ch. 442, § 28; reenacted and amended, Laws, 1994, ch. 622, § 29; reenacted without change, Laws, 1997, ch. 497, § 28; reenacted without change, Laws, 2001, ch. 410, § 28, eff from and after July 1, 2001.

Editor's Note — This section is derived from former § 81-1-47 (Codes, 1942, § 5186; Laws, 1934, ch. 146; 1936, ch. 165).

Cross References — Additional fee for special examination or other special services, see § 81-1-93.

Disbursement of maintenance fund, see § 81-1-109.

§ 81-1-109. Disbursements from department maintenance fund.

All moneys paid out of the department maintenance fund shall be paid by the Treasurer upon warrants issued by the State Fiscal Officer, which warrants shall be issued by the State Fiscal Officer upon a voucher approved by the commissioner except in the payment of salaries and expenses, and warrants shall be issued by the State Fiscal Officer therefor upon a voucher approved by the Governor.

SOURCES: Laws, 1980, ch. 312, § 28; reenacted, Laws, 1982, ch. 303, § 28; Laws, 1990 Ex Sess, ch. 46, § 27; Laws, 1993, ch. 442, § 29; reenacted and amended, Laws, 1994, ch. 622, § 30; reenacted without change, Laws, 1997, ch. 497, § 29; reenacted without change, Laws, 2001, ch. 410, § 29, eff from and after July 1, 2001.

Editor's Note — This section is derived from former § 81-1-49 (Codes, 1942, § 5187; Laws, 1934, ch. 146).

Section 7-7-2, as added by Laws, 1984, chapter 488, § 90, and amended by Laws, 1985, chapter 455, § 14, Laws 1986, chapter 499, § 1, provided, at subsection (2), that the words "state auditor of public accounts," "state auditor", and "auditor" appearing in the laws of the state in connection with the performance of auditor's functions transferred to the state fiscal management board, shall mean the state fiscal management board. Thereafter, Laws, 1989, chapter 532, § 2, amended § 7-7-2 to provide that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer. Subsequently, Laws, 1989, ch. 544, § 17, codified as

§ 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

§ 81-1-111. Forms and record books to be supplied.

For the purpose of carrying into effect the provisions of Title 81 of the Mississippi Code of 1972, the commissioner shall provide the necessary forms. All reports received by the commissioner shall be preserved by him in the department. The State Treasurer is authorized to provide forms and record books for the office of the commissioner, and such forms and record books shall be paid for upon order of the commissioner out of the department maintenance fund.

SOURCES: Laws, 1980, ch. 312, § 29; reenacted, Laws, 1982, ch. 303, § 29; Laws, 1990 Ex Sess, ch. 46, § 28; Laws, 1993, ch. 442, § 30; Laws, 1994, ch. 622, § 31; reenacted without change, Laws, 1997, ch. 497, § 30; reenacted without change, Laws, 2001, ch. 410, § 30, eff from and after July 1, 2001.

Editor's Note — This section is derived from former § 81-1-51 (Codes, 1942, § 5187; Laws, 1934, ch. 146).

Cross References — Department Maintenance Fund, see § 81-1-107.

§ 81-1-113. Annual report to legislature.

The commissioner shall make a full report as required by law of other state officers, to the Legislature at each regular session thereof, of the proceedings in and work of the department and of all charters issued and all banks closed for insolvency or voluntarily liquidated. He shall submit with each report such recommendations with reference to the department as he may consider appropriate. The report shall show fully, separately, and in detail the work done and the expenses incurred by the commissioner and each examiner.

SOURCES: Laws, 1980, ch. 312, § 30; reenacted, Laws, 1982, ch. 303, § 30; Laws, 1990 Ex Sess, ch. 46, § 29; Laws, 1993, ch. 442, § 31; Laws, 1994, ch. 622, § 32; reenacted without change, Laws, 1997, ch. 497, § 31; reenacted without change, Laws, 2001, ch. 410, § 31, eff from and after July 1, 2001.

Editor's Note — This section is derived from former § 81-1-53 (Codes, 1942, § 5189; Laws, 1934, ch. 146; 1970, ch. 520, § 1).

Cross References — Duty to incorporate exhibits and schedules of receipts and disbursements for each year into annual report, see § 81-1-71.

§ 81-1-115. Fees for filing documents and issuing certificates.

(1) The department shall charge and collect for:

(a) Filing articles of incorporation of banking corporations and credit unions, and issuing a certificate of incorporation, a minimum fee of Five Hundred Dollars ($500.00) up to a maximum fee of Two Thousand Five Hundred Dollars ($2,500.00), as fixed by the commissioner.

(b) Filing articles of merger when the resulting bank or credit union is a state bank or credit union, a minimum fee of Five Hundred Dollars ($500.00) up to a maximum fee of Two Thousand Five Hundred Dollars ($2,500.00), as fixed by the commissioner.

(c) Filing an application for conversion from a national bank, state or federal thrift, or credit union to a state bank or credit union, a minimum fee of Five Hundred Dollars ($500.00) up to a maximum fee of Two Thousand Five Hundred Dollars ($2,500.00), as fixed by the commissioner.

(d) Filing an application for a branch bank or credit union, a minimum fee of Two Hundred Fifty Dollars ($250.00) up to a maximum fee of One Thousand Five Hundred Dollars ($1,500.00), as fixed by the commissioner.

(e) Filing an application for a Loan Production Office (LPO), a minimum fee of Fifty Dollars ($50.00) up to a maximum fee of Five Hundred Dollars ($500.00), as fixed by the commissioner.

(f) Filing an application for an electronic terminal, a minimum fee of Two Hundred Fifty Dollars ($250.00) up to a maximum fee of One Thousand Five Hundred Dollars ($1,500.00), as fixed by the commissioner.

(g) Filing an application to establish out-of-state branch offices by in-state banks and credit unions, a minimum fee of Five Hundred Dollars ($500.00) up to a maximum fee of One Thousand Five Hundred Dollars ($1,500.00), as fixed by the commissioner.

(h) Filing an application to establish in-state branch offices by an out-of-state bank or credit union, a minimum fee of Five Hundred Dollars ($500.00) up to a maximum fee of One Thousand Five Hundred Dollars ($1,500.00), as fixed by the commissioner.

(i) Filing an application to establish a branch of a foreign bank, a minimum fee of Five Hundred Dollars ($500.00) up to a maximum fee of Two Thousand Five Hundred Dollars ($2,500.00), as fixed by the commissioner.

(2) The commissioner shall publish a schedule of fees applicable to all banks within his jurisdiction.

SOURCES: Laws, 1980, ch. 312, § 31; reenacted, Laws, 1982, ch. 303, § 31; Laws, 1990 Ex Sess, ch. 46, § 30; Laws, 1993, ch. 442, § 32; Laws, 1994, ch. 622, § 33; Laws, 1997, ch. 542, § 1; reenacted and amended, Laws, 1997, ch. 497, § 32; reenacted without change, Laws, 2001, ch. 410, § 32, eff from and after July 1, 2001.

Editor's Note — This section is derived from former § 81-1-55 (Laws, 1978, ch. 310, § 1).

Joint Legislative Committee Note — Section 1 of ch. 542, Laws, 1997, effective from and after passage (approved April 10, 1997) amended this section. Section 32 of ch. 497, Laws, 1997, reenacted and amended this section, effective July 1, 1997. As set out above, this section reflects the language of Section 32 of ch. 497, Laws, 1997, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, the amendment with the latest effective date shall supersede all other amendments to the same section taking effect earlier.

Cross References — Credit Unions, see §§ 81-13-1 et seq.

§ 81-1-117. Transfer of functions.

Upon March 21, 1980, the Department of Bank Supervision and the office of State Comptroller, as created by Section 81-1-1, and the State Banking Board, as created by Section 81-3-13, are hereby abolished. The functions, duties and responsibilities of the Department of Bank Supervision, the office of State Comptroller and the State Banking Board shall be assumed by the Department of Banking and Consumer Finance, the Commissioner of Banking and Consumer Finance, and the State Board of Banking Review, respectively, as provided in this chapter. All assets, funds, contractual rights and obligations, records, equipment and property rights which are now vested in the Department of Bank Supervision, the office of State Comptroller and the State Banking Board are hereby vested in the Department of Banking and Consumer Finance, the Commissioner of Banking and Consumer Finance, and the State Board of Banking Review, respectively.

SOURCES: Laws, 1980, ch. 312, § 1; reenacted, Laws, 1982, ch. 303, § 32; Laws, 1990 Ex Sess, ch. 46, § 31; Laws, 1993, ch. 442, § 33; reenacted and amended, Laws, 1994, ch. 622, § 34; reenacted without change, Laws, 1997, ch. 497, § 33; reenacted without change, Laws, 2001, ch. 410, § 33, eff from and after July 1, 2001.

§ 81-1-119. Notice of charges; temporary cease and desist order.

(1) If any person or state bank is engaging in, or has engaged in, or is about to engage in, any unsafe or unsound practice, or unfair and discriminatory practice, in conducting the bank's business, or violation of any other law, rule, regulation, order or condition imposed in writing by the commissioner, the commissioner may issue a notice of charges to such person or institution. A notice of charges shall specify the acts alleged to sustain a cease and desist order, and state the time and place at which a hearing shall be held. A hearing before the commissioner on the charges shall be held no earlier than seven (7) days, and no later than fifteen (15) days, after issuance of the notice. The charged institution is entitled to a further extension of seven (7) days upon filing a request with the commissioner. The commissioner may also issue a notice of charges if he has reasonable grounds to believe that any person or bank is about to engage in any unsafe or unsound business practice, or any violation of this chapter, or any other law, rule, regulation or order. If, by a preponderance of the evidence, it is shown that any person or bank is engaged in, or has been engaged in, or is about to engage in, any unsafe or unsound business practice, or unfair and discriminatory practice or any violation of this chapter, or any other law, rule, regulation or order, a cease and desist order shall be issued which shall be permanently binding upon the person or institution until terminated by the commissioner.

(2) If any person or state bank is engaging in, has engaged in, or is about to engage in any unsafe or unsound practice, or unfair and discriminatory practice, in conducting the bank's business, or any violation of any law, rules,

regulation, order or condition imposed in writing by the commissioner, and the commissioner has determined that immediate corrective action is required, the commissioner may issue a temporary cease and desist order without prior notice. A temporary cease and desist order shall be effective immediately upon issuance for a period of fifteen (15) days, and may be extended once for a period of fifteen (15) days. Such an order shall state its duration on its face and the words "Temporary Cease and Desist Order." A hearing before the commissioner shall be held within the time that the order remains effective, at which time a temporary order may be dissolved or made permanent.

SOURCES: Laws, 1996, ch. 400, § 1; brought forward, Laws, 1997, ch. 497, § 34; brought forward, Laws, 2001, ch. 410, § 34, eff from and after July 1, 2001.

§ 81-1-121. Bank violation; civil penalty.

(1) Except as otherwise provided, any bank which is found to have violated any provision of Chapters 1 through 9, Title 81, Mississippi Code of 1972, may be ordered to pay a civil penalty not to exceed Twenty Thousand Dollars ($20,000.00). Any bank which is found to have violated or failed to comply with any cease and desist order issued under the authority of this chapter may be ordered to pay a civil penalty not to exceed Twenty Thousand Dollars ($20,000.00) for each day that the violation or failure to comply continues.

(2) To enforce the provisions of this section, the commissioner is authorized to assess such penalty and to appear in a court of competent jurisdiction and to move the court to order payment of the penalty. Prior to the assessment of the penalty, a hearing shall be held by the commissioner.

(3) Nothing in this section shall prevent anyone damaged by a state bank from bringing a separate cause of action in a court of competent jurisdiction.

SOURCES: Laws, 1996, ch. 400, § 2; brought forward, Laws, 1997, ch. 497, § 35; brought forward, Laws, 2001, ch. 410, § 35, eff from and after July 1, 2001.

§ 81-1-123. Director, officer or employee violation; civil penalty.

(1) Any person, whether a director, officer or employee, who is found to have violated any provision of Chapters 1 through 9, Title 81, Mississippi Code of 1972, whether willfully, or as a result of gross negligence, gross incompetency or recklessness, may be ordered to pay a civil penalty not to exceed Five Thousand Dollars ($5,000.00) per violation. Any person who is found to have violated or failed to comply with any cease and desist order issued under the authority of this chapter may be ordered to pay a civil penalty not to exceed Five Thousand Dollars ($5,000.00) per violation for each day that the violation or failure to comply continues.

(2) To enforce the provisions of this section, the commissioner is authorized to assess such penalty, to appear in a court of competent jurisdiction and

to move the court to order payment of the penalty. Prior to the assessment of the penalty, a hearing shall be held by the commissioner.

(3) Nothing in this section shall prevent anyone damaged by a director, officer or employee of a state bank from bringing a separate cause of action in a court of competent jurisdiction.

SOURCES: Laws, 1996, ch. 400, § 3; brought forward, Laws, 1997, ch. 497, § 36; brought forward, Laws, 2001, ch. 410, § 36, eff from and after July 1, 2001.

§ 81-1-125. Commissioner to issue orders for supervisory control with regard to banks.

(1) Whenever the commissioner determines that a solvent bank is conducting its business in an unsafe or unsound manner, or in any fashion which threatens the financial integrity or sound operation of the bank, the commissioner may serve a notice of charges on the bank, requiring it to show why it should not be placed under supervisory control. Such notice of charges shall specify the grounds for supervisory control, and set the time and place for a hearing. A hearing before the commissioner pursuant to such notice of charges shall be held within fifteen (15) days after issuance of the notice of charges.

(2) If, after the hearing provided above, the commissioner determines that supervisory control of the bank is necessary to protect the bank's members, customers, stockholders or creditors, or the general public, the commissioner shall issue an order taking supervisory control of the bank.

(3) If the order taking supervisory control becomes final, the commissioner may appoint an agent to supervise and monitor the operations of the bank during the period of supervisory control. During the period of supervisory control, the bank shall act in accordance with such instructions as may be given by the commissioner, directly or through his supervisory agent, and shall not fail to act, except when to do so would violate an outstanding cease and desist order.

(4) Within one hundred eighty (180) days of the date the order taking supervisory control becomes final, the commissioner shall issue an order approving a plan for the termination of supervisory control. The plan may provide for:

(a) The issuance by the bank of capital stock;
(b) The appointment of one or more officers and/or directors;
(c) The reorganization, merger or consolidation of the bank;
(d) The dissolution and liquidation of the bank;
(e) Other such measures as determined by the commissioner.

The order approving the plan shall not take effect until thirty (30) days after issuance during which time period an appeal may be filed in a court of competent jurisdiction.

(5) All costs of this proceeding shall be paid by the bank.

(6) For the purpose of this section, an order shall be deemed final if:

(a) No appeal is filed within the specific time allowed for the appeal; or
(b) All judicial appeals are exhausted.

(7) If a bank is insolvent, the provisions of Chapter 9 of Title 81, Mississippi Code of 1972, shall apply.

SOURCES: Laws, 1996, ch. 400, § 4; brought forward, Laws, 1997, ch. 497, § 37; brought forward, Laws, 2001, ch. 410, § 37, eff from and after July 1, 2001.

§ 81-1-127. Commissioner to issue notice of charges to employee who has participated in any violation.

(1) If, in the commissioner's opinion, any director, officer or employee of any bank has participated in, or consented to, any violation of any law, rule, regulation or order, or any unsafe or unsound business practice in the operation of any bank, or any insider loan not specifically authorized by law, or any repeated violation of, or failure to comply with, any bank's bylaws, the commissioner may serve a written notice of charges upon such director, officer or employee and the bank, stating his intent to remove such director, officer or employee. Such notice shall specify the alleged conduct of such director, officer or employee and shall state the place for a hearing before the commissioner. A hearing shall be held no earlier than fifteen (15) days, but no later than thirty (30) days, after the notice of charges is served. If, after the hearing, the commissioner determines that the charges asserted have been proven by a preponderance of the evidence, the commissioner may issue an order removing the director, officer or employee in question. Such an order shall be effective upon issuance and may include the entire board of directors or all of the officers of the bank.

(2) If it is determined that any director, officer or employee of any bank has knowingly participated in, or consented to, any violation of any law, rule, regulation or order, or engaged in any unsafe or unsound business practice in the operation of any bank, or any repeated violation of, or failure to comply with, any bank's bylaws, and that as a result, a situation exists requiring immediate corrective action, the commissioner may issue an order temporarily removing such person or persons pending a hearing. Such an order shall state its duration on its face and the words "Temporary Order of Removal" and shall be effective upon issuance for a period of fifteen (15) days. Such order may be extended once for a period of fifteen (15) days. A hearing must be held within ten (10) days of the expiration of a temporary order, or any extension thereof, at which time a temporary order may be dissolved or converted to a permanent order.

(3) Any removal pursuant to subsection (1) or (2) of this section shall be effective in all respects as if such removal has been made by the board of directors and the members or stockholders of the bank in question.

(4) Without the prior written approval of the commissioner, no director, officer or employee permanently removed pursuant to this section or otherwise removed by a federal agency of proper authority shall be eligible to be elected, reelected or appointed to any position as a director, officer or employee of that bank, nor shall such director, officer or employee be eligible to be elected to or retain a position as a director, officer or employee of any other state bank, bank

subsidiary, bank holding company or any other entity regulated by the department.

(5) The commissioner may promulgate rules or regulations and/or cooperate with any other state or federal administrative agencies in order to enforce the prohibitions of this section.

SOURCES: Laws, 1996, ch. 400, § 5; brought forward, Laws, 1997, ch. 497, § 38; brought forward, Laws, 2001, ch. 410, § 38; Laws, 2014, ch. 359, § 1, eff from and after July 1, 2014.

Amendment Notes — The 2014 amendment inserted "or otherwise removed by a federal agency of proper authority" in (4); added (5).

§ 81-1-129. Appeal of cease and desist order.

Any person or state bank against whom a cease and desist order is issued or a fine is imposed may have such order or fine reviewed by a court of competent jurisdiction. Except as otherwise provided, an appeal may be made only within thirty (30) days of the issuance of the order or the imposition of the fine, whichever is later.

SOURCES: Laws, 1996, ch. 400, § 6; brought forward, Laws, 1997, ch. 497, § 39; brought forward, Laws, 2001, ch. 410, § 39, eff from and after July 1, 2001.

§ 81-1-131. Fines and penalties; reimbursement.

No person who is fined or penalized for a violation of any criminal provision of this chapter shall be reimbursed or indemnified in any fashion by the bank for such fine or penalty.

SOURCES: Laws, 1996, ch. 400, § 7; brought forward, Laws, 1997, ch. 497, § 40; brought forward, Laws, 2001, ch. 410, § 40, eff from and after July 1, 2001.

§ 81-1-133. Cumulative penalties, fines and remedies.

All penalties, fines and remedies provided by this chapter shall be cumulative.

SOURCES: Laws, 1996, ch. 400, § 8; brought forward, Laws, 1997, ch. 497, § 41; brought forward, Laws, 2001, ch. 410, § 41, eff from and after July 1, 2001.

§ 81-1-135. Consumer industry licensees required to participate in multistate licensing system.

(1) The Legislature finds that a uniform multistate administration of a multistate licensing system for consumer industry licensees regulated by the Department of Banking and Consumer Finance is consistent with both the public interest and the provisions of law regulating those licensees; therefore, the Commissioner of Banking and Consumer Finance may require consumer industry licensees to participate in a multistate licensing system.

(2) Nothing in this section shall authorize the commissioner to require any person exempt from licensure under the provisions of law regulating consumer industry licensees to participate in the multistate licensing system.

(3) The commissioner may establish, by rule, regulation or order, requirements as necessary, including, but not limited to:

(a) Background checks for:

(i) Criminal history through fingerprint or other databases;

(ii) Civil or administrative records;

(iii) Credit history; or

(iv) Any other information as deemed necessary by the multistate licensing system.

(b) The payment of fees to apply for or renew licenses through the multistate licensing system.

(c) The setting or resetting as necessary of renewal or reporting dates; and

(d) Requirements for amending or surrendering a license or any other such activities as the commissioner deems necessary for participation in the multistate licensing system.

(4) Any person engaged in activity that requires licensure pursuant to this section shall utilize the multistate licensing system for application, renewal, amendment, surrender and any other activity as the commissioner may require, and shall pay all applicable charges to utilize the multistate licensing system.

(5) The commissioner is authorized to establish relationships or contacts with the multistate licensing system or other entities designated by the multistate licensing system to collect and maintain records and process transaction fees or other fees related to licensees.

SOURCES: Laws, 2011, ch. 443, § 1, eff from and after July 1, 2011.

§ 81-1-137. Financial literacy programs for the public.

The department may establish programs for the education of the public with respect to financial literacy, any provision of this title, or any industry regulated by the department. The department and the Office of Consumer Protection under its authority to establish programs for the education of the public under Section 75-24-21 may coordinate their efforts for the education programs authorized for the department under this section.

SOURCES: Laws, 2014, ch. 359, § 3, eff from and after July 1, 2014.

CHAPTER 3

Incorporation and Organization of Banks

Sec.
81-3-1. Definition of words "bank," "corporation," "eligible bank," as used in title.
81-3-3. Use of words "bank," "banking," "bankers," "trust company," etc.; supervision and assessment of banks.
81-3-5. Incorporation of banks.
81-3-7. Articles of incorporation.
81-3-9. Number of directors; payment for capital stock; increases in authorized but unissued capital stock.
81-3-11. Capital stock and surplus required.
81-3-12. State board of banking review; members; appointment; compensation; ineligibility to consider certain matters; meetings and hearings.
81-3-13. Certificate to incorporate and organize.
81-3-14. Repealed.
81-3-15. Renewals and amendments of charters.
81-3-17. Ownership by holding company.

§ 81-3-1. Definition of words "bank," "corporation," "eligible bank," as used in title.

Whenever the word "bank" is used in any statute, unless the context clearly shows that it is intended to be limited in its application to a particular character of bank, it shall include trust companies, savings banks, branches of banks and trust companies, and all other institutions subject to the provisions of this title. The term "corporation," when used in this title, or "trust company" when used in this title, shall be construed and held to embrace every character of bank, branch bank, trust company or any branch thereof, which is subject to the jurisdiction of the Department of Banking and Consumer Finance. The term "eligible banks," when used in this title, means an institution which is well capitalized as defined by regulations of the Federal Deposit Insurance Corporation, has examination ratings of two (2) or higher, has Community Reinvestment Act (CRA) ratings of satisfactory or higher, and has no supervisory enforcement actions pending.

SOURCES: Codes, 1942, § 5154; Laws, 1934, ch. 146; Laws, 1997, ch. 542, § 2, eff from and after passage (approved April 10, 1997).

Cross References — Acceptance of letters of credit under the Mississippi Superconducting Super Collider Act, see § 57-67-37.

Mississippi Major Economic Impact Act, application of section to, see § 57-75-21.

Use of words "bank," "banking," "bankers," "trust company," see § 81-3-3.

State-chartered banks having and possessing the rights, powers, privileges, immunities, duties and obligations of a national bank having its principal place of business in this state, irrespective of any conflict with the provisions of this section, see § 81-5-1(9).

RESEARCH REFERENCES

ALR. Wills: what constitutes "bank," "checking," or "savings" account, within meaning of bequest. 31 A.L.R.4th 688.

Am Jur. 10 Am. Jur. 2d, Banks and Financial Institutions §§ 1, 2, 3.

CJS. 9 C.J.S., Banks and Banking § 3.

§ 81-3-3. Use of words "bank," "banking," "bankers," "trust company," etc.; supervision and assessment of banks.

Every banking corporation organized under the laws of this state shall include the word "bank" or "banking" in its name. No corporation hereafter organized shall include in its name the words "bank," "banker," "bankers," "banking" or "trust company," or any of them, or any combination thereof, or any words of similar import, unless such corporation shall, by the express provisions of its charter, be limited solely to the doing of a banking or trust business, or a combination of banking and trust business as contemplated in this chapter; and all such corporations shall be incorporated and organized under and pursuant to the terms of this chapter providing for the incorporation of banking corporations and not otherwise.

Every corporation organized under the laws of this state for the purpose of conducting or carrying on a commercial banking business, or the business of a savings bank, or trust company, or the exercise of trust powers as defined in this title, or any combination thereof, shall be subject to supervision by the department of bank supervision and the state comptroller, and to assessments for the maintenance of said department as provided by law.

SOURCES: Codes, 1942, § 5155; Laws, 1934, ch. 146; Laws, 1958, ch. 161.

Editor's Note — Section 81-1-57 provides that wherever the words "Department of Bank Supervision" or "department" are used when referring to the Department of Bank Supervision, they shall be construed to mean the Department of Banking and Consumer Finance.

Cross References — Creation of department of banking and consumer finance, see § 81-1-59.

Definition of word "bank," see § 81-3-1.

State-chartered banks having and possessing the rights, powers, privileges, immunities, duties and obligations of a national bank having its principal place of business in this state, irrespective of any conflict with the provisions of this section, see § 81-5-1(9).

State trust company organization requirements, see § 81-27-4.101 et seq.

§ 81-3-5. Incorporation of banks.

Five or more persons of full age and of good moral and sound business character may organize themselves into a banking corporation. Banking corporations may be created for the purpose of conducting and carrying on a bank and trust company business, such trust company business to be limited as herein provided, and to establish offices of loan and deposit to be known as savings banks, or to establish banks having departments for carrying on all of the above classes of business; and said banking corporations may, under the provisions of the banking laws of Mississippi, establish branch banks and branch offices within territorial limitations as hereinafter provided in Chapter 7 of this title. No private individual, or partnership, or association of persons other than a corporation shall be allowed to conduct any type of banking business within this state.

SOURCES: Codes, 1942, § 5156; Laws, 1934, ch. 146.

Cross References — State-chartered banks having and possessing the rights, powers, privileges, immunities, duties and obligations of a national bank having its principal place of business in this state, irrespective of any conflict with the provisions of this section, see § 81-5-1(9).

Formation of corporations to hold bank assets, see § 81-5-29.

RESEARCH REFERENCES

Am Jur. 10 Am. Jur. 2d, Banks and Financial Institutions §§ 120-181, 109-116, 159.

CJS. 9 C.J.S., Banks and Banking §§ 33, 34.

§ 81-3-7. Articles of incorporation.

The articles of incorporation of every banking corporation shall be signed and acknowledged before an officer authorized by the laws of this state to take acknowledgments and shall specify:

(a) The name assumed by such corporation which shall be in no material respect similar to the name of any other corporation organized under the laws of this state.

(b) The county and city, town or village where such corporation will be domiciled and conduct its business.

(c) The nature of its business, whether that of a commercial bank, savings bank, trust company or any combination thereof.

(d) That the amount of capital stock shall be divided into shares of not less than One Dollar ($1.00) each.

(e) The names and places of residence of the stockholders and the number of shares held by each of them.

(f) The period for which the corporation is organized which shall not exceed ninety-nine (99) years, but which may be renewed for additional periods of ninety-nine (99) years each, as set out in Section 81-3-15.

(g) The articles of incorporation shall be executed in triplicate, and after the proper incorporation fee has been paid, and the articles approved by the Secretary of State, the State Comptroller, the Attorney General and the Governor, one (1) copy shall be filed in the office of the Secretary of State and recorded there as required by law; one (1) copy in the office of the Department of Bank Supervision and one (1) copy filed for record in the office of the chancery clerk of the county in which the banking corporation is domiciled, and then returned to said banking corporation and kept in its files.

Every banking corporation shall adopt appropriate bylaws to govern its operation, which shall harmonize with the provisions of its articles of incorporation and the laws of the state. Every banking corporation shall designate a person to serve as president and a person to serve as cashier.

When the period of existence of a banking corporation heretofore created for a period of fifty (50) years shall expire, if such banking corporation shall continue to do business thereafter for a period of ninety (90) days, the same shall operate as an acceptance of an extension of the life of such banking corporation to a full period of ninety-nine (99) years from the date of the original charter thereof, and such banking corporation shall continue in existence as a de jure corporation as fully and completely as if the charter thereof had been thus amended prior to the end of the original period of fifty (50) years.

SOURCES: Codes, 1942, § 5157; Laws, 1934, ch. 146; Laws, 1936, ch. 165; Laws, 1954, ch. 167; Laws, 1979, ch. 406; Laws, 1994, ch. 320, § 2, eff from and after July 1, 1994.

Editor's Note — Section 81-1-57 provides that wherever the words "Department of Bank Supervision" or "department" are used when referring to the Department of Bank Supervision, they shall be construed to mean the Department of Banking and Consumer Finance.

Section 81-1-117 abolished the office of state comptroller, and provided that the functions, duties and responsibilities would be assumed by the commissioner of banking and consumer finance.

Cross References — Filing fee for articles of incorporation, see § 81-1-115.

Procedures for approval of certificate of incorporation, see § 81-3-13.

State-chartered banks having and possessing the rights, powers, privileges, immunities, duties and obligations of a national bank having its principal place of business in this state, irrespective of any conflict with the provisions of this section, see § 81-5-1(9).

Articles of incorporation of savings associations, see § 81-12-25.

State trust company organization requirements, see § 81-27-4.101 et seq.

JUDICIAL DECISIONS

1. In general.
2. Invalidity of charter as defense.

1. In general.

Where a state banking board adopted a motion that a certain bank offer to the proponents of a new bank who have sought authority to incorporate in such town, 49 per cent of the presently outstanding capital stock of the certain bank at book value as of a certain date, and where the board recommended charter for new bank within 30 days if no agreement could be arrived at, the order was invalid as a conditional order, offer or judgment beyond the board's jurisdiction and power and the state banking department was the only legal entity authorized to make a final determination. Oliphant v. Carthage Bank, 224 Miss. 386, 80 So. 2d 63 (1955).

Where the state banking board entered a nunc pro tunc order granting a certificate of authority to incorporate a new bank in a certain town if the present bank in the town did not sell or offer to sell to the proponents of the new bank, 49 per cent of the presently outstanding capital stock, within 30 days from the previous order recommending the incorporation, the nunc pro tunc order was invalid on the ground that there was no notice to the present bank of the board's meeting at which the order was made. Oliphant v.

Carthage Bank, 224 Miss. 386, 80 So. 2d 63 (1955).

2. Invalidity of charter as defense.

In suit by minority stockholders against directors for losses resulting from their negligence, directors cannot plead invalidity of charter. Boyd v. Applewhite, 121 Miss. 879, 84 So. 16 (1920), modified, 123 Miss. 185, 85 So. 87 (1920).

RESEARCH REFERENCES

Am Jur. 3A Am. Jur. Legal Forms 2d, Banks §§ 38:29 et seq. (formation; bylaws and rules).

3B Am. Jur. Legal Forms 2d, Banks §§ 38:21, 38:22.

Law Reviews. 1979 Mississippi Supreme Court Review: Corporate & Commercial Law. 50 Miss. L. J. 741, December, 1979.

§ 81-3-9. Number of directors; payment for capital stock; increases in authorized but unissued capital stock.

Every banking corporation shall have at least five (5) directors, and before transacting any business its entire capital stock shall be paid in full in cash except as herein otherwise provided.

Any banking corporation, with the approval of the state comptroller, by amendment to its articles of incorporation approved by the affirmative vote of stockholders owning two-thirds (⅔) of the capital stock of the banking corporation entitled to vote, at a meeting setting forth the purpose thereof, may authorize an increase in the capital stock of the banking corporation in the category of authorized but unissued capital stock, either with or without preemptive rights, provided that the total authorized amount of such authorized but unissued capital stock shall not exceed fifteen percent (15%) of the amount issued and outstanding capital stock of such banking corporation entitled to vote on the amendment authorizing such authorized but unissued capital stock. Authorized but unissued capital stock may be issued, from time to time, as stock dividends or for such other purposes and considerations as may be approved by the stockholders, the board of directors of the banking corporation and by the state comptroller.

SOURCES: Codes, 1942, § 5158; Laws, 1934, ch. 146; Laws, 1979, ch. 407, eff from and after July 1, 1979.

Editor's Note — Section 81-1-117 abolished the office of state comptroller and provided that the functions, duties and responsibilities would be assumed by the commissioner of banking and consumer finance.

Cross References — Amendment of articles of incorporation, generally, see § 81-3-15.

State-chartered banks having and possessing the rights, powers, privileges, immunities, duties and obligations of a national bank having its principal place of business in this state, irrespective of any conflict with the provisions of this section, see § 81-5-1(9).

JUDICIAL DECISIONS

1. In general.

A bank was not authorized, under former Banking Act (§ 3786, Code 1930), to accept a note in payment of a subscription for its capital stock, on the theory that a promissory note was commercial paper, and that the capital of a bank might be in commercial paper. Merchants Bank & Trust Co. v. Walker, 192 Miss. 737, 6 So. 2d 107 (1942).

A statutory provision (Code 1942, § 5327) that a note, obligation or security given or transferred by a subscriber for stock in any corporation should not be taken or held as payment for capital stock of the company was applicable to a note given to a bank in payment for shares of its capital stock, which had been authorized and issued after the corporation was organized and became a going concern. Merchants Bank & Trust Co. v. Walker, 192 Miss. 737, 6 So. 2d 107 (1942).

§ 81-3-11. Capital stock and surplus required.

(1) No banking corporation shall be permitted to operate in the State of Mississippi under the provisions of this chapter unless it has the minimum capital of Two Million Dollars ($2,000,000.00) or any additional amounts required by the supervising federal regulatory agencies. However, this requirement of capital shall not apply to banks in operation in this state before July 1, 1994. At any time that the commissioner finds that an operating bank has an insufficient amount of capital, it shall be his duty to call upon such bank to restore the capital to an amount to be determined to be adequate to safeguard the depositors of the bank.

(2) For the purpose of strengthening its capital structure, every banking corporation organized under the laws of this state shall, except as otherwise provided herein, at the close of business each year set aside to the credit of a separate surplus account, to be denominated on its books "Earned Surplus," an amount not less than twenty-five percent (25%) of its net earnings, after providing for the payment of dividends on its preferred stock, if any, until the "Earned Surplus" account on its books shall amount to a sum equal to three (3) times the total of its common and preferred stock. However, any bank having at the close of the business year a ratio of total deposits to total capital, surplus and earned surplus not in excess of a ratio of Ten Dollars ($10.00) of deposits to One Dollar ($1.00) of total capital (such deposits to be the average of the deposits shown by all of the calls for the business year and such capital to include all stock, surplus and earned surplus) shall be required to set aside twenty-five percent (25%) of its earnings only to the extent necessary to cause its "Earned Surplus" account to equal its total capital. When such ratio of total deposits to total capital of any bank at the close of business any year does not exceed that specified above and the "Earned Surplus" account is equal to or more than the amount of its total capital, then such bank shall not be required to set aside twenty-five percent (25%) of its earnings for that year to the credit of its "Earned Surplus" account, but may so set aside any part of its earnings until its "Earned Surplus" account is equal to three (3) times its total capital. The net earnings of every bank set aside to its "Earned Surplus" account shall be exempt from all state, county, municipal, levee district and other ad valorem

taxes. Every national banking association doing business in this state which shall comply with the provisions hereof, shall be entitled to the same exemption from taxation on its earned surplus and to the same rights and privileges hereby given to state banks.

"Earned Surplus" as referred to in this chapter shall be construed to mean only the earned surplus account as shown on the books of the bank on the effective date of this chapter and such earnings as may thereafter be credited to such account. Surplus actually carried on the books of the bank on April 2, 1934, shall remain taxable, and if charged off for any purpose other than to transfer it to taxable common stock, it shall be restored either out of the earned surplus account or from earnings. But if the state comptroller, or in the case of a national bank, the comptroller of the currency, shall determine that on April 2, 1934, there were actually existing losses among the assets of a bank and that the surplus shown on the books of such bank was not actually worth the amount at which it was then being carried, he may issue his certificate to the bank showing the actual value of its surplus on April 2, 1934, and the bank may reduce the amount thereof to the actual value as shown by such certificate and shall not be required to restore it.

The paid-in surplus of any bank derived from sale of shares of its capital stock after January 1, 1961, shall be considered as earned surplus in an amount not to exceed the common stock and shall be treated as earned surplus for the purpose of ad valorem taxation.

In rendering the annual statement required by section 27-35-35, Code of 1972, banks may exclude from the value of their shares the total "earned surplus" as shown on their books, and such earned surplus shall not be taken into consideration by the assessing officers or equalizing authority, in arriving at the amount of the personal assessment.

SOURCES: Codes, 1942, § 5159; Laws, 1934, ch. 146; Laws, 1944, ch. 254; Laws, 1948, ch. 204, § 1; Laws, 1966, ch. 241, § 1; Laws, 1968, ch. 256, § 1; Laws, 1994, ch. 320, § 8, eff from and after July 1, 1994.

Editor's Note — Section 81-1-117 abolished the office of state comptroller and provided that the functions, duties and responsibilities would be assumed by the commissioner of banking and consumer finance.

Cross References — Tax assessment of banks, see §§ 27-35-9, 27-35-11, 27-35-35.

State-chartered banks having and possessing the rights, powers, privileges, immunities, duties and obligations of a national bank having its principal place of business in this state, irrespective of any conflict with the provisions of this section, see § 81-5-1(9).

Issuance of preferred stock, see § 81-5-23.

Capital of credit unions, see § 81-13-35.

JUDICIAL DECISIONS

1. In general.

Bank's "capital stock and surplus" is aggregate true value of its assets, including lands and personal property; bank's "capital stock and surplus" for taxation is difference between aggregate true value of realty and total true value of assets, including land and personalty. Board of

Supvrs. v. Riverside Bank, 158 Miss. 653, 131 So. 80 (1930).

RESEARCH REFERENCES

ALR. Validity, construction, and effect of statutory provisions concerning capital requisites of state incorporation of bank. 79 A.L.R.3d 1190.

Am Jur. 10 Am. Jur. 2d, Banks and Financial Institutions §§ 285 et seq.

§ 81-3-12. State board of banking review; members; appointment; compensation; ineligibility to consider certain matters; meetings and hearings.

(1) There is created the State Board of Banking Review, which shall be composed of five (5) members appointed by the Governor as provided in this section, one (1) of whom shall be from the First Supreme Court District, one (1) of whom shall be from the Second Supreme Court District, one (1) of whom shall be from the Third Supreme Court District, and two (2) of whom shall be from the state at large. The members appointed from the state at large shall be designated as representatives of the banks and shall be active executive officers or directors of state chartered banks with actual practical experience of at least five (5) years therein. The members appointed from each Supreme Court District shall be persons knowledgeable in economic affairs and of recognized ability in a trade or business, with at least three (3) years' actual experience therein, but shall not presently be officers or directors in any banking corporation, shall not have been officers or directors in any banking corporation for the past five (5) years immediately prior to their appointment to the board, shall not become officers or directors of any banking corporation while serving on the board, and shall not be the beneficial owner, directly or indirectly, of five percent (5%) or more of the capital stock in any banking corporation; such persons shall be designated representatives of borrowers and depositors. Each member shall be eligible for reappointment at the discretion of the Governor. The board shall elect from its number a chairman and a vice chairman. Each member of the board shall be a citizen of the United States, a resident of the State of Mississippi and a qualified elector therein, of integrity and sound and nonpartisan judgment. Each member shall qualify by taking the oath of office and shall hold office until his successor is appointed and qualified.

(2) On March 21, 1980, the board shall be appointed as follows: The Governor shall appoint one (1) member from the Third Supreme Court District for a term of one (1) year, one (1) member from the Second Supreme Court District for a term of two (2) years, one (1) member from the First Supreme Court District for a term of three (3) years, one (1) member from the state at large for a term of four (4) years, and one (1) member from the state at large for a term of five (5) years. Upon the expiration of the foregoing terms, members shall be appointed by the Governor for terms of five (5) years. The Governor shall fill any vacancy in the above terms by appointment of a member

for the unexpired term. All appointments shall be with the advice and consent of the Senate.

(3) The members of the board shall serve without compensation except that members shall be paid their actual and necessary expenses in connection with the performance of their duties as members of the board, including mileage, as authorized in Section 25-3-41, plus a per diem as is authorized by law while engaged in the performance of such duties. Such expenses, mileage and per diem allowance shall be paid out of the maintenance fund of the Department of Banking and Consumer Finance.

(4) If an application for authority to establish a bank, branch bank or branch office be filed with the commissioner for consideration from any municipality or county of which the member of the board who is a representative of the banks is a resident, or if such application is filed from any county in which the member's bank has a branch bank or branch office, such member shall be ineligible to serve in consideration and determination of such application, and the commissioner shall certify such fact to the Governor who shall thereupon appoint another banker from the same geographical location as the member who is ineligible to serve on the board in the place and stead of such member during consideration of such application.

(5) In addition to its other duties and powers, the board may adopt reasonable rules or regulations, consistent with applicable provisions of law, concerning the conduct of board meetings and hearings and all formal and informal board procedures relating to such meetings and hearings. The board shall have authority, with respect to its hearings or meetings, to determine the order and form in which evidence may be presented and to impose reasonable time limitations on presentation of evidence.

SOURCES: Laws, 1980, ch. 312, § 32; Laws, 1980, ch. 560, § 28; reenacted, Laws, 1982, ch. 302, § 1; Laws, 1983, ch. 319; Laws, 1990 Ex Sess, ch. 46, § 33; Laws, 1993, ch. 442, § 34; reenacted and amended, Laws, 1994, ch. 622, § 35; reenacted without change, Laws, 1997, ch. 497, § 42; reenacted without change, Laws, 2001, ch. 374, § 1, eff from and after July 1, 2001.

Cross References — Supreme Court districts, see § 9-3-1.

For provision authorizing uniform per diem compensation for officers and employees of state boards, commissions and agencies, see § 25-3-69.

Department of Banking and Consumer Finance Maintenance Fund, see § 81-1-107.

Board decisions regarding formation of new trust companies, see § 81-27-4.103.

RESEARCH REFERENCES

ALR. What is "branch bank" within statutes regulating establishment of branch banks. 23 A.L.R.3d 683.

§ 81-3-13. Certificate to incorporate and organize.

(1) Before any bank may be organized and formed, the prospective incorporators shall give notice to the Commissioner of Banking and Consumer

Finance of their desire to engage in banking and apply for a certificate of authority to incorporate, and shall at the time file with the commissioner a copy of the proposed articles of incorporation, duly sworn to by one (1) of the prospective incorporators. The commissioner shall promptly give consideration to the application and make an examination of the proposed articles of incorporation to determine if they meet all requirements of law. The commissioner shall then make an investigation of the number of parent banks, branch banks, branch offices and branch facilities, and location thereof then serving the area in which the proposed new bank is to be located, the ratio of capital funds to total deposits therein, the record of earnings and condition of existing banks and what effect, if any, a new unit bank would have on them, the number of previous bank failures in the area and their liquidation record and banking history generally in the area, the population of the area wherein the proposed bank will be located and relation to number of banks operating therein, reasonable prospects of growth of the area and its financial resources and whether the same are static, progressive or retrogressive, expectation of profitable operation of the proposed new bank, and the morals and business character of the prospective incorporators and such further investigation to determine whether the public necessity requires that the proposed new bank should be chartered and permitted to operate.

When the commissioner has completed the examination and made his investigation, he shall record his findings in writing and shall draw up his recommendations to the State Board of Banking Review, established in Section 81-3-12. At the request of the chairman, he shall thereupon, in writing, call a meeting of the board to give consideration to his findings and recommendations, such call to be issued at least ten (10) days in advance of the meeting. Such meetings shall be held within one hundred twenty (120) days from the date on which the prospective incorporators gave notice to the commissioner of their desire to engage in banking, applied for a certificate of authority to incorporate, and filed with the commissioner a copy of the proposed articles of incorporation. The commissioner shall at the same time give notice of the meeting of the board to the prospective incorporators of the proposed new bank and to any and all other interested persons and shall extend to them an invitation to be heard in writing or in person by the board.

The board, at its meeting, shall consider the findings and recommendations of the commissioner and shall hear such oral testimony as he may wish to give, and shall also receive information and hear testimony from the prospective organizers of the proposed bank and from any and all other interested persons bearing upon the public necessity for the organization and operation of the new bank.

After considering the record submitted to it by the commissioner and his oral testimony and considering such other information and evidence, either written or oral, which has come before it, the board shall decide if it has before it sufficient information and evidence upon which it can dispose of the application to form the new bank. If it is determined that evidence and information is not sufficient, then the board shall order the commissioner to secure such additional information and evidence as it may prescribe or shall request from the prospective incorporators and from other interested persons. The board shall thereupon set a date for a future meeting to be held before the expiration of the aforementioned one hundred twenty (120) day time limit and shall give to the prospective incorporators and other interested persons notice of such meeting, and shall recess the meeting then being held until such future date. The board shall have and is hereby vested with the power to compel attendance of witnesses just as is the commissioner or examiner as provided for in Section 81-1-85, and all testimony given before said board shall be taken down and transcribed by a stenographer in the manner prescribed in Section 81-1-87.

If the board, or a majority thereof, shall determine that it has before it sufficient evidence and information upon which to base a decision, then it shall render a written opinion and decision in the matter within sixty (60) days after the conclusion of the final board hearing. If its decision is favorable, then the board shall order the commissioner to give to such prospective incorporators a certificate under his hand and official seal of the Department of Banking and Consumer Finance authorizing the prospective incorporators to proceed to incorporate and organize as is provided in Section 81-3-7.

When a certificate of incorporation is sought in order to effect the acquisition of an insolvent bank sold pursuant to the provisions of Chapter 9, Title 81, Mississippi Code of 1972, any constraints of time imposed by this subsection shall not apply if the commissioner determines that an emergency exists which requires expedition of the procedure for granting a certificate in order to protect the interests of the public and the interests of depositors and creditors of the insolvent bank.

(2) Appeal from unfavorable decision of State Board of Banking review. If the decision of the board, or a majority thereof, is unfavorable to the organization of the proposed new bank, it shall render a written opinion and decision giving its reason for rejection within sixty (60) days after the conclusion of the final board hearing in the matter, and the commissioner shall so advise the prospective incorporators, giving them a copy of the written decision and opinion of the board. If the prospective incorporators be aggrieved at the unfavorable decision of the board in denying a certificate authorizing them to proceed with the incorporation of the proposed new bank and the organization thereof, they shall have the right of appeal to the chancery court of the county in which the proposed bank shall be located, which appeal shall be taken and perfected within sixty (60) days from the date of the denial of such certificate. The denial of said certificate by the board shall be construed as a judicial finding and appealable as such. All such appeals shall be taken, perfected, heard and determined either in termtime or vacation, and such appeals shall be heard and disposed of promptly by the court. Appeals from the board shall be taken and perfected by the filing of a bond in the sum of Two Hundred Fifty Dollars ($250.00), with two (2) sureties, or with a surety company qualified to do business in Mississippi as surety, conditioned to pay the costs of the appeal, the bond to be approved by the clerk of the chancery

court, and such bond shall be payable to the state and may be enforced in its name as other judicial bonds filed in the chancery court, and judgment may be entered upon such bonds and process and execution shall issue upon such judgments as provided by law in other cases. Appeals may be taken from the chancery court to the Supreme Court in the manner now provided by law. Upon approval of the bond by the clerk of the chancery court the clerk shall give notice to the commissioner of the appeal from the decision of the board, and it thereupon shall be the duty of the commissioner to promptly transmit to the clerk of the chancery court in which the appeal is pending the original or a certified copy of the application, proposed charter of incorporation, and his findings or decision thereon together with the opinion and decision of the board, including a transcript of pleadings and testimony, both oral and documentary, which shall be docketed by the clerk and shall be tried by the court. In perfecting such appeals, the provisions of law respecting notice to reporters and allowance of bills of exception, now or hereafter in force respecting appeals from the chancery court to the Supreme Court shall be applicable thereto. If the prospective incorporators of the proposed new bank shall prevail, a decree shall be entered requiring the issuance by the commissioner of the certificate authorizing applicants to incorporate and organize in the same manner as if the application therefor had been approved by the board, and the costs therein incurred shall be paid by the commissioner out of the maintenance fund of the Department of Banking and Consumer Finance. If, however, the action of the board be affirmed by the court, a decree shall be entered to that effect taxing costs of the proceedings to the applicants. The commissioner or the applicants shall have the right of appeal from the decision of the chancery court. During the time the cause is pending in the office of the commissioner or before the board or the court, the commissioner shall not issue a certificate to a subsequent applicant to incorporate and organize a new bank or authorize any bank then existing to establish a branch bank, or branch office within the area wherein the proposed new bank is to be domiciled, and neither shall he consent to the removal of the domicile of an existing bank from another place into the area where the proposed new bank will be domiciled. A cause shall not be considered as pending in the office of the commissioner or before the board if the prospective incorporators or their representative have only given notice to the commissioner of their desire to engage in banking and apply for a certificate of authority to incorporate, but have not filed with the commissioner a copy of the proposed articles of incorporation and other documents required by statute or administrative regulation.

If the decision of the board, or a majority thereof, is favorable to the organization of the proposed bank, it shall in like manner as above render a written opinion and decision within sixty (60) days after the conclusion of the final board hearing on the matter, and an appeal in the manner herein set forth shall be available to any interested organizations, person or persons who have participated in the proceedings and feel aggrieved by the decision of the board.

(3) Certificate to begin business. When a bank has been incorporated and the capital stock thereof has been paid in full, the incorporators shall notify the

commissioner of such fact, whereupon the commissioner himself or through an examiner shall make a special examination of the proposed new bank and, finding the capital stock to have been paid in full, he shall under his hand and seal of the Department of Banking and Consumer Finance issue to the bank a certificate authorizing it to commence business, and when such business has been commenced the bank shall notify the commissioner to that effect. Upon completion of such special examination, the bank shall pay to the Department of Banking and Consumer Finance as an assessment an amount sufficient to reimburse for the actual costs and expenses incurred during such special examination. The commissioner or examiner shall give a receipt therefor in duplicate, and the assessment shall be turned over by the Department of Banking and Consumer Finance to the State Treasurer for credit to the maintenance fund of the Department of Banking and Consumer Finance. The proposed new bank shall not transact any business except as is necessarily preliminary to its incorporation and organization until it has been authorized by the commissioner to begin business. However, in the event the board shall reject any application for a certificate of convenience and necessity, all costs incurred by this board in making a survey or holding a hearing on such application shall be borne by the petitioners.

(4) Expiration of certificate to incorporate and organize a bank. Notwithstanding the foregoing and any other provision of law to the contrary, if a bank has not been established and is not in operation within two (2) years from the date of the certificate to incorporate and organize such bank or within two (2) years from the date upon which any appellate litigation with respect to such certificate has been concluded, the certificate shall expire. Provided, however, the State Board of Banking Review may extend for good cause shown said two-year period a maximum number of two (2) times for periods not exceeding six (6) months each. This provision shall in no way affect certificates issued prior to March 21, 1980.

SOURCES: Codes, 1942, § 5160; Laws, 1934, ch. 146; Laws, 1948, ch. 203, § 1; Laws, 1954, ch. 162; Laws, 1972, ch. 317, § 1; Laws, 1979, ch. 340, § 2; Laws, 1980, ch. 312, § 33; Laws, 1985, ch. 328; Laws, 1995, ch. 308, § 3, eff from and after passage (approved March 8, 1995).

Cross References — Fee for issuance of certificate of incorporation, see § 81-1-115.

State-chartered banks having and possessing the rights, powers, privileges, immunities, duties and obligations of a national bank having its principal place of business in this state, irrespective of any conflict with the provisions of this section, see § 81-5-1(9).

JUDICIAL DECISIONS

1. Generally.
2. Investigation and report.
3. Findings of fact.
4. "Necessity."
5. Orders.
6. Scope of judicial review.

1. Generally.

A certain amount of expertise in the field of banking and reasonable latitude in the exercise of sound judgment must be accorded the banking board in the performance of its specialized duties. First Nat'l

Bank v. Martin, 238 So. 2d 856 (Miss. 1970).

The state banking board is an administrative body, and not an inferior judicial tribunal. First Nat'l Bank v. Martin, 238 So. 2d 856 (Miss. 1970).

The purpose of this section [Code 1942, § 5160] is not to deter competition or foster monopoly, but to guard the public against imprudent banking. Planters Bank v. Garrott, 239 Miss. 248, 122 So. 2d 256 (1960), error overruled, 239 Miss. 291, 123 So. 2d 240 (1960).

2. Investigation and report.

Where the state banking board's reason for refusing the request of an objecting bank for the right to examine the report or the examiner who made the investigation for the comptroller on an application for a new bank was that the report was prepared for the benefit of the comptroller as a basis on which his finding and recommendations were made to the banking board as required by statute, the board's statement negated the assumption by the objecting bank that the board had before it and did in fact consider evidence that was not introduced at the hearing before the board. Britton & Koontz First Nat'l Bank v. Biglane, 285 So. 2d 181 (Miss. 1973).

It is apparent from Code 1942, § 5160 that the legislature intended for the comptroller to make an investigation in sufficient depth to determine whether in his opinion a bank should be chartered, although there is no opposition to the application. Britton & Koontz First Nat'l Bank v. Biglane, 285 So. 2d 181 (Miss. 1973).

Code 1942, § 5160 does not contemplate that the reports of those employed by the comptroller to assist in his investigation on the application of a proposed bank should be a part of the evidence in a hearing before the board. Britton & Koontz First Nat'l Bank v. Biglane, 285 So. 2d 181 (Miss. 1973).

Proper procedure requires that a copy of the report and recommendation of the comptroller in respect to the application for a new bank be furnished to interested parties at the outset of the hearing before the state banking board so that the interested parties will have an opportunity to rebut the same by evidence. Britton & Koontz First Nat'l Bank v. Biglane, 285 So. 2d 181 (Miss. 1973).

3. Findings of fact.

In denying an application for a certificate to incorporate and organize a new bank, the banking board is not required to make an express or specific detailed findings of the facts, for under this section [Code 1942, § 5160] it was only required that the board render a written opinion and decision giving its reasons for rejection. First Nat'l Bank v. Martin, 238 So. 2d 856 (Miss. 1970).

The state banking board is not required to make express findings of fact in support of its conclusion that public necessity warranted the granting of leave to establish a new bank. Planters Bank v. Garrott, 239 Miss. 248, 122 So. 2d 256 (1960), error overruled, 239 Miss. 291, 123 So. 2d 240 (1960).

4. "Necessity."

Banking board's approval of application to incorporate new bank and trust company was supported by substantial evidence and applicants met their burden of showing of public necessity where no new unit bank had come to the area since 1944, there were only three unit banks in the area and each was enjoying a steady growth of capital and deposits, and the area itself was growing at an unusual rate. Hancock Bank v. Gaddy, 328 So. 2d 361 (Miss. 1976).

The word "necessity" as used in this section [Code 1942, § 5160] means a substantial obvious need justifying the chartering of a new bank in view of the disclosed relevant circumstances, and mere convenience is not sufficient to satisfy the statutory requisite of "necessity". First Nat'l Bank v. Martin, 238 So. 2d 856 (Miss. 1970).

The burden of showing "public necessity" rested upon the parties applying for the certificate to organize a new bank. First Nat'l Bank v. Martin, 238 So. 2d 856 (Miss. 1970).

In determining whether "necessity" warrants the granting of application for lease to establish a new bank, mere convenience is not of itself sufficient, but may be taken into consideration. Planters Bank v. Garrott, 239 Miss. 248, 122 So. 2d

256 (1960), error overruled, 239 Miss. 291, 123 So. 2d 240 (1960).

An application for leave to establish a new bank should not be denied because existing banking facilities are giving adequate service. Planters Bank v. Garrott, 239 Miss. 248, 122 So. 2d 256 (1960), error overruled, 239 Miss. 291, 123 So. 2d 240 (1960).

5. Orders.

Where a state banking board adopted a motion that a certain bank offer to the proponents of a new bank who have sought authority to incorporate in such town, 49 per cent of the presently outstanding capital stock of the certain bank at book value as of a certain date, and where the board recommended charter for new bank within 30 days if no agreement could be arrived at, the order was invalid as a conditional order, offer or judgment beyond the board's jurisdiction and power and the state banking department was the only legal entity authorized to make a final determination. Oliphant v. Carthage Bank, 224 Miss. 386, 80 So. 2d 63 (1955).

Where the state banking board entered a nunc pro tunc order granting a certificate of authority to incorporate a new bank in a certain town if the present bank in the town did not offer to sell or sell to the proponents of the new bank, 49 per cent of the presently outstanding capital stock, within 30 days from the previous order recommending the incorporation, the nunc pro tunc order was invalid on the ground that there was no notice to the present bank of the board's meeting at which the order was made. Oliphant v. Carthage Bank, 224 Miss. 386, 80 So. 2d 63 (1955).

6. Scope of judicial review.

On appeal from an order based upon a factual finding by a trier of facts, such as the banking board, the supreme court accepts the evidence which supports or tends to support the conclusion upon which the order is based, together with all inferences favorable to it which reasonably may be drawn from the evidence. First Nat'l Bank v. Martin, 238 So. 2d 856 (Miss. 1970).

The findings of the banking board are prima facie correct, and the chancery court cannot substitute its judgment for that of the board and disturb its findings where there is any substantial basis in the evidence for such findings, or where the ruling of the board is not capricious or arbitrary. First Nat'l Bank v. Martin, 238 So. 2d 856 (Miss. 1970).

This section [Code 1942, § 5160] fully provides what the transcript on appeal must contain. Hernando Bank v. Davidson, 250 Miss. 23, 164 So. 2d 403 (1964).

Where the appellant did not raise the question of improper notice at the hearing before the banking board, and was silent on the subject of notice until the case was advanced to the appellate court, appellant failed to preserve the technical error complained of for review and was estopped from raising the question of notice on appeal. Hernando Bank v. Davidson, 250 Miss. 23, 164 So. 2d 403 (1964).

A decision of the banking board will not be reversed on appeal where only technical errors are committed, but in order for there to be reversible error there must be a clear showing that the error complained of is substantially prejudicial to the appellant and the public. Hernando Bank v. Davidson, 250 Miss. 23, 164 So. 2d 403 (1964).

Failure of the state banking board to require witnesses testifying upon the hearing of an application for leave to organize a new bank, that they had been told that officers of the existing bank used the granting of loans to further their personal and political interests, to disclose the names of their informants, held not prejudicial error. Planters Bank v. Garrott, 239 Miss. 248, 122 So. 2d 256 (1960), error overruled, 239 Miss. 291, 123 So. 2d 240 (1960).

On an application to the state banking board for leave to organize a new bank, the findings of the state comptroller showing the results of his investigation of the application should be filed and made available to the interested parties as part of the record during the hearing; but failure to do so may be waived. Planters Bank v. Garrott, 239 Miss. 248, 122 So. 2d 256 (1960), error overruled, 239 Miss. 291, 123 So. 2d 240 (1960).

Judicial review of a determination of the state banking board under this section is limited to the question of procedural due process, and the question whether the determination is supported by substantial evidence. Planters Bank v. Garrott, 239 Miss. 248, 122 So. 2d 256 (1960), error overruled, 239 Miss. 291, 123 So. 2d 240 (1960).

RESEARCH REFERENCES

ALR. Validity, construction, and effect of statutory provisions concerning capital requisites of state incorporation of bank. 79 A.L.R.3d 1190.

Am Jur. 10 Am. Jur. 2d, Banks and Financial Institutions §§ 180, 181.

Law Reviews. 1979 Mississippi Supreme Court Review: Corporate & Commercial Law. 50 Miss. L. J. 741, December, 1979.

§ 81-3-14. Repealed.

Repealed by Laws, 2001, ch. 374, § 2, eff from and after July 1, 2001.

[Laws, 1979, ch. 301, § 49; Laws, 1980, ch. 312, § 39; Laws, 1982, ch. 302, § 2; Laws, 1990 Ex Sess, ch. 46, § 34; Laws, 1993, ch. 442, § 35; reenacted, 1994, ch. 622, § 36; Laws, 1997, ch. 497, § 43, eff from and after July 1, 1997.]

Editor's Note — Former § 81-3-14 provided for the repeal of § 81-3-12.

§ 81-3-15. Renewals and amendments of charters.

The charter or articles of incorporation of banking corporations heretofore created or that may hereafter be created, may be renewed or amended in the following manner:

The stockholders in a special or regular meeting, shall first, by a vote of a majority in amount of all stock outstanding, adopt a resolution setting forth the proposed renewal or amendment, subject to the approval of the state comptroller. Three copies of such resolution duly certified by the president or vice-president of such bank shall be forwarded to the state comptroller for his approval, together with the fee required by statute. If the proposed amendment is approved by the state comptroller, he shall attach his certificate of approval to each of the copies and forward all three copies to the Attorney General for his approval, and shall forward the fee required by statute to the Secretary of State. If and when approved by the Attorney General, all three copies of said amendment shall be forwarded to the Governor for his approval, and when approved by him shall be forwarded by the Governor to the Secretary of State. The Secretary of State shall retain one copy and file and record the same in his office. He shall forward one copy thereof to the state comptroller, who shall retain and file the same in his office. The remaining copy shall be returned to the bank, and the bank shall immediately record the same in the office of the chancery clerk of the county in which the bank is domiciled. Said copy after being so recorded, shall be returned to the bank and retained by it in its files. It shall not be necessary to publish such renewal or amendment.

SOURCES: Codes, 1942, § 5161; Laws, 1934, ch. 146.

Editor's Note — Section 81-1-117 abolished the office of state comptroller, and provided that the functions, duties and responsibilities would be assumed by the commissioner of banking and consumer finance.

Cross References — Articles of incorporation, generally, see § 81-3-7.

State-chartered banks having and possessing the rights, powers, privileges, immunities, duties and obligations of a national bank having its principal place of business in this state, irrespective of any conflict with the provisions of this section, see § 81-5-1(9).

RESEARCH REFERENCES

CJS. 9 C.J.S., Banks and Banking § 42.

§ 81-3-17. Ownership by holding company.

(1) Subject to the prohibitions provided in Section 81-5-28, Mississippi Code of 1972, but notwithstanding any other provision of law, any bank may simultaneously with its incorporation provide for its ownership by a holding company.

(2) Subject to the prohibitions provided in Section 81-5-28, Mississippi Code of 1972, but notwithstanding any other provision of law, any bank may reorganize its ownership to provide for ownership by a holding company upon adoption of a plan of reorganization by a favorable vote of not less than two-thirds (⅔) of the members of the board of directors of the bank and approval of such plan of reorganization by the holders of not less than a majority of the issued and outstanding shares of stock of the bank. The plan of reorganization shall provide that (a) the resulting ownership shall be vested in a Mississippi corporation; (b) all stockholders of the stock bank shall have the right to exchange shares; (c) the exchange of stock shall not be subject to state or federal income taxation; (d) stockholders not wishing to exchange shares shall be entitled to dissenters' rights as provided under Section 79-4-13.01 et seq., Mississippi Code of 1972; and (e) the plan of reorganization is fair and equitable to all stockholders.

SOURCES: Laws, 1997, ch. 542, § 10, eff from and after passage (approved April 10, 1997).

RESEARCH REFERENCES

Am Jur. 54 Am. Jur. 2d, Monopolies, Restraints of Trade, and Unfair Trade Practices §§ 709-711 et seq.

CJS. 9 C.J.S., Banks and Banking § 5, 7 et seq.

CHAPTER 5

General Provisions Relating to Banks and Banking

General Provisions 81-5-1
Depository Financial Institutions Self-evaluation Reports 81-5-151

GENERAL PROVISIONS

Sec.
81-5-1. General regulations.
81-5-2. Private corporation laws; application to state banks.
81-5-3. Bank not to permit use of its name.
81-5-5. Local and regional banks for farm loans authorized.
81-5-7. Preservation of old records.
81-5-9. Banks shall become members of the Federal Deposit Insurance Corporation.
81-5-11. State banks may become members of Federal Reserve Bank.
81-5-13. Federal Reserve Act requirements must be observed.
81-5-15. Officers and employees of banks to furnish fidelity bond; insurance.
81-5-17. Bank stock; transfer and use as collateral.
81-5-19. Stock; record of transfer of to be kept.
81-5-21. Stock of other banks not to be owned.
81-5-23. Preferred stock; issuance authorized.
81-5-25. Investments in stock of small business investment companies.
81-5-27. Liability of stockholders.
81-5-28. Bank holding companies; definitions; control of banks.
81-5-29. Corporations may be formed to purchase, hold and own bank assets.
81-5-31. Voting trusts prohibited.
81-5-33. Powers in regard to trusts.
81-5-34. Accounts of administrators, executors, guardians, trustees, and other fiduciaries.
81-5-35. State and national banks acting in fiduciary capacity not required to file bond; exception.
81-5-37. Uniform Common Trust Fund Law.
81-5-39. Banks may register securities held in fiduciary capacity in name of bank's nominee.
81-5-40. Repealed.
81-5-41. Foreign investors may engage in certain activities without qualifying.
81-5-43. Out-of-state banking and trust associations and corporations may act as executors, administrators, trustees and guardians.
81-5-45. Qualification and oath of directors; meetings; executive and auditing committee.
81-5-47. Directors may contract to sell stock while continuing to serve.
81-5-49. Interlocking directorates prohibited.
81-5-51. Loans to directors and executive officers.
81-5-53. Limitation of liability when dealing with agents, trustees, etc.
81-5-55. Name of depositors not to be disclosed.
81-5-56. Month and year checking account opened to be printed on face of checks.
81-5-57. Excess deposits; limit and penalty.
81-5-59. Deposit of minors.
81-5-61. Safe deposit boxes; leasing to minors.
81-5-62. Accounts payable at death.

81-5-63. Deposit in name of two or more persons; payments to successors of deceased depositors without administration; "successor" defined.
81-5-65. Accounts of deceased depositors to be reported; publicity of same.
81-5-67. Settlement of adverse claims to deposits.
81-5-69. Repealed.
81-5-71. Certifying checks.
81-5-73. Repealed.
81-5-75. Authorization for payment of dividend.
81-5-77. Limit of loans and extensions of credit to single borrower.
81-5-79. Small loans.
81-5-81. Effect of third-party deposits to induce making of unsound loans.
81-5-83. Limit of borrowing power of banks.
81-5-85. Consolidation, conversion or merger of state or state and national banks, state or federal savings and loan associations and state-chartered banks, and state or federal savings banks and state-chartered banks.
81-5-87. Holding of real estate by bank.
81-5-89. Limitations upon acceptances.
81-5-91. Repealed.
81-5-93. Clearinghouse associations authorized.
81-5-95. Powers of clearinghouse associations.
81-5-97. Banking hours.
81-5-98. Drive-in teller windows and branch offices considered to be branch banks.
81-5-99. Repealed.
81-5-100. Establishment of electronic banking terminals.
81-5-101. Dissolution of solvent banks.
81-5-103. General penalty.
81-5-105. Standard of care for bank directors established.

§ 81-5-1. General regulations.

(1) All banking corporations are prohibited, either through their officers or as a banking agency, from participating, directly or indirectly, in the operation of any underwriting syndicate which handles securities for resale. However, this inhibition shall not apply to bonds issued by federal, state, county or other governmental agencies.

(2) The executive officers of banking corporations now existing or hereafter organized under the laws of the State of Mississippi, are prohibited from owning stock in private banking houses or other agencies engaged in the business of underwriting securities for resale.

(3) The Commissioner of Banking and Consumer Finance is authorized, empowered and directed to promulgate rules and regulations, relative to withdrawals of deposits from savings banks, trust companies and other banking institutions, and the commissioner may, in cases of emergency, declare bank holidays and do any and all things necessary to insure, protect and conserve the resources of such banks.

(4) All state banking corporations are prohibited from making loans to state, county, municipal and district governmental agencies, unless such loans are made in strict compliance with legal enactments and regulations which govern, and such banking corporations are further prohibited from transfer-

ring funds from one state, county, municipal or district account to another unless authorized by warrant issued by proper authority, and such banking corporations are prohibited from discounting state, county, municipal, district or other public certificates and warrants, but such certificates and warrants may be used as collateral to guarantee the payment of notes or other obligations.

(5) The board of directors of any banking corporation created under the laws of this state may, at its option, require any or all employees of such to file with the board of directors a sworn financial statement semiannually or more often if it so desires.

(6) Any bank may, at its option, pay all checks drawn on it with currency or valid exchange drawn on a bank in a reserve city not more than five hundred (500) miles distant from such bank; but each depositor is entitled to have his checks paid each day in currency to the total extent of ten percent (10%) of his deposit if it exceeds One Thousand Dollars ($1,000.00) and at least One Hundred Dollars ($100.00) each day if his balance is over One Hundred Dollars ($100.00) and less than One Thousand Dollars ($1,000.00), and may demand his entire balance in currency at any time if One Hundred Dollars ($100.00) or less.

(7) All state banking corporations may purchase for the account of their customers bonds, stocks and other securities, and such banking corporations may charge for their service in connection with the handling of such transactions only actual expenses plus the usual broker's fees allowed for similar service by national banks.

(8) Any state bank may purchase, lease or otherwise acquire automatic data processing computers and related machinery and equipment, and such bank may utilize and operate such computers, machinery and equipment in performing for itself, its customers or any other bank such services as may be desired including, but not limited to, check and deposit sorting and posting, computation and posting of interest and other credits and charges, preparation and mailing of checks, statements, notices and similar items, or any other clerical, bookkeeping, accounting, statistical or similar functions performed by and for a bank. Corporations may be organized under the laws of the State of Mississippi for the purpose of owning and operating, by purchase, lease or otherwise, such computers, related machinery and equipment as aforesaid, and such corporations may perform for any bank those services as above mentioned; and stock of such corporations shall be legal investments for state banks to the same extent that stock of bank service corporations is eligible for acquisition by national banks under the provisions of the Bank Service Corporation Act, Public Law 87-856, 76 Stat. 1132.

(9) In addition to other powers, a state-chartered bank shall have and possess such of the rights, powers, privileges, immunities, duties and obligations of a national bank having its principal place of business in this state as may be prescribed by the State Board of Banking Review by general regulation under the circumstances and conditions set out therein. In the event of a conflict between the provisions of this subsection (9) and the provisions of any

other act or acts, directly or indirectly, governing or regulating the activities of state-chartered banks, the provisions of this subsection (9) shall control, and insurance activities of all banks, their subsidiaries, affiliates, branches, officers and employees doing business in this state shall be governed by the provisions of Title 83, Mississippi Code of 1972, only to the extent that Title 83, Mississippi Code of 1972, applies to national banks in Mississippi.

SOURCES: Codes, 1942, § 5224; Laws, 1934, ch. 146; Laws, 1936, ch. 165; Laws, 1954, ch. 164; Laws, 1966, ch. 252, § 1; Laws, 1982, ch. 486; Laws, 1983, ch. 342, § 1; Laws, 1988, ch. 543, § 2; Laws, 1988, ch. 576; Laws, 1991, ch. 345, § 1; Laws, 1995, ch. 307, § 1; Laws, 1997, ch. 305, § 1; Laws, 2006, ch. 412, § 1, eff from and after July 1, 2006.

Cross References — Legal holidays, see § 3-3-7.

Acceptance by banks of checks payable to state agency, see § 27-105-37.

Acceptance by banks of checks payable to county, municipality, political subdivision or body politic, see § 27-105-369.

Commercial paper under the Uniform Commercial Code, see §§ 75-3-101 et seq.

Bank deposits and collections under the Uniform Commercial Code, see §§ 75-4-101 et seq.

Functions of commissioner of banking and finance generally, see §§ 81-1-61 et seq.

Loans by savings and loan associations, see §§ 81-12-157, 81-12-159, 81-12-161.

Multistate, state and limited liability trust institutions, see § 81-27-1.001 et seq.

Federal Aspects — The Bank Service Corporation Act referred to herein is codified at 12 USCS § 1861 et seq.

RESEARCH REFERENCES

ALR. Corporation's power to enter into partnership or joint venture. 60 A.L.R.2d 917.

Power of savings bank or similar institution to provide checking facilities or negotiable orders of withdrawal (NOW) to customers. 64 A.L.R.3d 1314.

Maintenance of computer terminal in retail store for purpose of effecting transfer of funds between financial institution and its depositors as conduct of banking business by store. 73 A.L.R.3d 1282.

Bank's liability for breach of implied contract of good faith and fair dealing. 55 A.L.R.4th 1026.

Am Jur. 10 Am. Jur. 2d, Banks and Financial Institutions §§ 1, 2, 3.

41 Am. Jur. Trials 683, Computer Research for the Trial Lawyer.

49 Am. Jur. Trials 281, Liability for Mishandled Computer Information.

CJS. 9 C.J.S., Banks and Banking §§ 5, 7 et seq.

§ 81-5-2. Private corporation laws; application to state banks.

All the provisions of law relating to private corporations operating in this state which are not inconsistent with this chapter or Chapters 1 and 3 of Title 81, Mississippi Code of 1972, or with the proper business of depository institutions, shall be applicable to all state banks.

SOURCES: Laws, 1998, ch. 392, § 1, eff from and after passage (approved March 17, 1998).

§ 81-5-3. Bank not to permit use of its name.

It shall be unlawful for any bank or corporation liable to taxation on its capital stock to permit any person to use its name in taking promissory notes, mortgages or deeds or trust, or to permit such instruments to indicate on their face that they are payable to such bank or corporation when the money to secure which such instruments are taken is not actually advanced or is not intended to be advanced by such bank or corporation, and it shall be unlawful for any person to use the name of such bank or corporation in making loans of money. Any such bank or corporation or individual violating the provisions of this section shall be liable to a penalty of twenty-five per cent of the amount of such loan, to be recovered by the state.

SOURCES: Codes, 1942, § 5190; Laws, 1934, ch. 146.

Cross References — State-chartered banks having and possessing the rights, powers, privileges, immunities, duties and obligations of a national bank having its principal place of business in this state, irrespective of any conflict with the provisions of this section, see § 81-5-1(9).

JUDICIAL DECISIONS

1. In general.

Loan by person in name of bank to avoid taxation held not void; statutory penalty is exclusive. Simmons v. Calloway, 138 Miss. 669, 103 So. 350 (1925).

§ 81-5-5. Local and regional banks for farm loans authorized.

Local and regional banks for the purpose of making and floating loans upon farms in the State of Mississippi may be established under any legislation enacted or to be enacted by Congress and in such manner as may be provided by Congress and any bonds representing loans on farms and bearing a rate of interest of six per cent or less per annum, shall be exempt from all state and other taxation.

SOURCES: Codes, 1942, § 5278; Laws, 1934, ch. 146.

Cross References — State-chartered banks having and possessing the rights, powers, privileges, immunities, duties and obligations of a national bank having its principal place of business in this state, irrespective of any conflict with the provisions of this section, see § 81-5-1(9).

RESEARCH REFERENCES

ALR. Bank's liability, under state law, for disclosing financial information concerning depositor or customer. 81 A.L.R.4th 377.

CJS. 9 C.J.S., Banks and Banking §§ 701, 702.

§ 81-5-7. Preservation of old records.

(1)(a) Each bank shall retain permanently the minute books of meetings of its stockholders and directors, its capital stock ledger and capital stock certificate ledger or stubs, its general ledger, its daily statements of condition, its general journal, its investment ledger, its copies of bank examination reports, and all ledger sheets showing unpaid balances in favor of depositors.

(b) The Commissioner of Banking and Consumer Finance shall from time to time prescribe by order and so notify each bank, a classified list of such other records which shall be preserved and the length of time therefor. Prior to issuing any such regulation, the commissioner shall consider:

(i) Actions at law and administrative proceedings in which the production of bank records might be necessary or desirable.

(ii) State and federal statutes of limitation applicable to such actions or proceedings.

(iii) The availability of information contained in bank records from other sources.

(iv) Such other matters as the commissioner shall deem pertinent in order that his regulations will require banks to retain their records for as short a period as is commensurate with the interests of bank customers and shareholders and of the people of this state in having bank records available.

(c) Any state bank may dispose of any record which has been retained for the period prescribed by or in accordance with the terms of this section for retention of records of its class, and shall thereafter be under no duty to produce such record in any action or proceeding.

(d) Any state bank may cause any or all records at any time in its custody to be reproduced in a format of storage commonly used, whether electronic, imaged, magnetic, microphotographic, or otherwise, and any reproduction so made shall have the same force and effect as the original thereof and be admitted in evidence equally with the original.

(e) To the extent that they are not in contravention of any law of the United States, the provisions of this section shall apply to all banks doing business in this state.

(2) No liability shall accrue against any bank destroying any records held for the period of time as provided in subsection (1) of this section, and in any cause or proceeding in which any such records or files may be called in question or be demanded of the bank or any officer or employee thereof, a showing that such records or files have been destroyed in accordance with the terms of this section shall be sufficient reason for the failure to produce them.

SOURCES: Codes, 1942, § 5278-01; Laws, 1944, ch. 258, §§ 1, 2; Laws, 1952, ch. 184, §§ 1, 2; Laws, 2000, ch. 335, § 1, eff from and after passage (approved Apr. 16, 2000.)

Editor's Note — Section 81-1-117 abolished the office of state comptroller, and provided that the functions, duties and responsibilities would be assumed by the commissioner of banking and consumer finance.

Amendment Notes — The 2000 amendment substituted "Commissioner of Banking and Consumer Finance" for "state comptroller of banks" in (1)(b); substituted "reproduced in a format of storage ... microphotographic, or otherwise, and" for "reproduced by the microphotographic process and" in (1)(d); substituted "subsection (1) of this section" for "paragraph 1 hereof" in (2); and substituted "commissioner" for "comptroller" throughout the section.

Cross References — State-chartered banks having and possessing the rights, powers, privileges, immunities, duties and obligations of a national bank having its principal place of business in this state, irrespective of any conflict with the provisions of this section, see § 81-5-1(9).

Record keeping — savings associations, see § 81-12-95.

Record keeping — credit unions, see § 81-13-73.

Record keeping — savings banks, see § 81-14-153.

§ 81-5-9. Banks shall become members of the Federal Deposit Insurance Corporation.

All banking corporations organized under the laws of the State of Mississippi shall become members of Federal Deposit Insurance Corporation or any other similar agency created by the laws of the United States to insure or guarantee deposits in banks. Such banks are empowered to enter into such contracts, incur such obligations and generally to do and perform all such acts and things as may be necessary or appropriate in order to take advantage of all memberships, grants, rights, or privileges which may at any time be available to banking institutions or their depositors, creditors, or stockholders by virtue of the act of Congress, and amendments thereto, providing for the establishment of Federal Deposit Insurance Corporation and the insurance of deposits in banks, or any other act, resolution or amendment passed by Congress to aid, regulate or safeguard banking institutions and their depositors, including any substitutions therefor; and banks are authorized to subscribe for and acquire any stock, debentures, bonds or other types of securities of the Federal Deposit Insurance Corporation.

SOURCES: Codes, 1942, § 5191; Laws, 1934, ch. 146; Laws, 1936, ch. 165; Laws, 1994, ch. 320, § 3, eff from and after July 1, 1994.

Cross References — Acceptance by commissioner of banking and consumer finance of examination performed by Federal Deposit Insurance Corporation, see § 81-1-81.

State-chartered banks having and possessing the rights, powers, privileges, immunities, duties and obligations of a national bank having its principal place of business in this state, irrespective of any conflict with the provisions of this section, see § 81-5-1(9).

Appointment of Federal Deposit Insurance Corporation as receiver, see § 81-9-73.

RESEARCH REFERENCES

CJS. 9 C.J.S., Banks and Banking § 708.

§ 81-5-11. State banks may become members of Federal Reserve Bank.

Any bank or trust company incorporated under the laws of Mississippi shall have power to subscribe to the capital stock and become a member of a Federal Reserve bank created and organized under the act of congress of the United States approved December 23, 1913, and known as the Federal Reserve Act and its amendments.

SOURCES: Codes, 1942, § 5283; Laws, 1934, ch. 146.

Cross References — State-chartered banks having and possessing the rights, powers, privileges, immunities, duties and obligations of a national bank having its principal place of business in this state, irrespective of any conflict with the provisions of this section, see § 81-5-1(9).

RESEARCH REFERENCES

CJS. 9 C.J.S., Banks and Banking § 684.

§ 81-5-13. Federal Reserve Act requirements must be observed.

Any bank or trust company, incorporated under the laws of Mississippi, which shall become a member of a Federal Reserve bank, shall comply with the reserve requirements of the Federal Reserve Act and its amendments, and the compliance of such bank or trust company therewith shall be in lieu of, and shall relieve such bank or trust company from, compliance with the provisions of the laws of this state relating to the maintenance of reserves.

SOURCES: Codes, 1942, § 5284; Laws, 1934, ch. 146.

Cross References — State-chartered banks having and possessing the rights, powers, privileges, immunities, duties and obligations of a national bank having its principal place of business in this state, irrespective of any conflict with the provisions of this section, see § 81-5-1(9).

§ 81-5-15. Officers and employees of banks to furnish fidelity bond; insurance.

Every active officer and employee of any bank or trust company in this state shall furnish a fidelity bond to the bank by which he is employed for the faithful performance of his duties, executed by some surety company authorized to do business in the State of Mississippi, as surety. The conditions of such bond, whether the instrument so describes the conditions or not, shall be that the principal shall protect the obligee against any loss or liability that the obligee may suffer or incur by reason of the acts of dishonesty of the principal or by reason of the violation of any of the provisions of the banking laws of Mississippi. The amount of such bond shall be fixed by the board of directors, subject, however, to approval of the state comptroller and the same shall be inspected upon the examination of the bank or trust company.

Every banking corporation shall provide adequate insurance protection and indemnity against robbery and burglary and other similar insurable losses. Whenever any bank refuses or fails to comply with this requirement the state comptroller may contract for such protection and indemnity and add the cost thereof to the assessment otherwise payable by such bank for the support of the department of bank supervision.

SOURCES: Codes, 1942, § 5192; Laws, 1934, ch. 146; Laws, 1936, ch. 165.

Editor's Note — Section 81-1-57 provides that wherever the words "state comptroller" of "comptroller" are used when referring to the office of state comptroller of banks, they shall be construed to mean the commissioner of banking and consumer finance.

Section 81-1-117 abolished the office of state comptroller, and provided that the functions, duties and responsibilities would be assumed by the commissioner of banking and consumer finance.

Cross References — State-chartered banks having and possessing the rights, powers, privileges, immunities, duties and obligations of a national bank having its principal place of business in this state, irrespective of any conflict with the provisions of this section, see § 81-5-1(9).

RESEARCH REFERENCES

ALR. Insurance of bank against larceny and false pretenses. 15 A.L.R.2d 1006.

Am Jur. 10 Am. Jur. 2d, Banks and Financial Institutions §§ 344 et seq., 476.

CJS. 9 C.J.S., Banks and Banking § 102.

§ 81-5-17. Bank stock; transfer and use as collateral.

The shares of stock of banks shall be deemed personal property, and shall be transferred on the books of the bank in such manner as the by-laws thereof shall direct, and as required by law. But no bank shall accept as collateral, or be the purchaser of, its own stock, except in cases where the taking of such collateral, or such purchase, shall be necessary to prevent loss upon a debt previously contracted in good faith, and in such cases, unless full payment of such debt is made, such stock shall be sold by the bank within twelve months from the date it was acquired.

SOURCES: Codes, 1942, § 5193; Laws, 1934, ch. 146.

Cross References — State-chartered banks having and possessing the rights, powers, privileges, immunities, duties and obligations of a national bank having its principal place of business in this state, irrespective of any conflict with the provisions of this section, see § 81-5-1(9).

Stock transfer record, see § 81-5-19.

JUDICIAL DECISIONS

1. In general.
2. Lien on stock.

1. In general.

This section [Code 1942, § 5193] held a valid regulation of banks. Planters' Bank v. J. Eskind & Sons, 134 Miss. 696, 99 So. 148 (1924).

2. Lien on stock.

Bank cannot acquire lien on its own stock by stock certificate provision so as to defeat assignee's lien. Bank of Pontotoc v. Robinson, 136 Miss. 409, 101 So. 561 (1924).

This section [Code 1942, § 5193] prohibits lien on stock to secure debt of stockholder to the bank except to prevent loss of previous debt. Bank of Pontotoc v. Robinson, 136 Miss. 409, 101 So. 561 (1924).

RESEARCH REFERENCES

ALR. Validity of restrictions on alienation or transfer of corporate stock. 61 A.L.R.2d 1318.

Right or duty of corporation to refuse to transfer stock on presentation of properly indorsed certificate, because of conflicting rights or claims of one other than transferee. 75 A.L.R.2d 746.

Am Jur. 10 Am. Jur. 2d, Banks and Financial Institutions §§ 298, 302 et seq., 616.

CJS. 9 C.J.S., Banks and Banking §§ 58-61, 245.

§ 81-5-19. Stock; record of transfer of to be kept.

A book shall be provided and kept by every bank, in which shall be entered the names and residences of the stockholders thereof, the number of shares held by each, the time when such person became a stockholder, and also all transfers of stock, stating the time when made, the number of shares and by whom transferred. In all actions, suits and proceedings, such book shall be prima facie evidence of the facts therein stated.

SOURCES: Codes, 1942, § 5194; Laws, 1934, ch. 146.

Cross References — State-chartered banks having and possessing the rights, powers, privileges, immunities, duties and obligations of a national bank having its principal place of business in this state, irrespective of any conflict with the provisions of this section, see § 81-5-1(9).

JUDICIAL DECISIONS

1. In general.

Bank issuing second certificate of stock without surrender of first is liable to subsequent purchaser of first certificate for value without notice. People's Bank v. Lamar County Bank, 107 Miss. 852, 66 So. 219 (1914), error overruled, 107 Miss. 852, 67 So. 961 (1915).

RESEARCH REFERENCES

ALR. Validity of restrictions on alienation or transfer of corporate stock. 61 A.L.R.2d 1318.

Right or duty of corporation to refuse to transfer stock on presentation of properly indorsed certificate, because of conflicting rights or claims of one other than transferee. 75 A.L.R.2d 746.

§ 81-5-21. Stock of other banks not to be owned.

No part of the stock of any bank except regional reserve banks shall be owned by a state bank. In cases where such stock is taken as collateral and the purchase thereof shall be necessary to prevent loss upon a debt previously contracted in good faith, then in such cases such stock shall be sold by the bank within twelve months from the time it was acquired, unless the consent of the state comptroller is obtained in writing extending such period. A violation of this section by any bank shall subject it to liquidation and forfeiture of charter.

SOURCES: Codes, 1942, § 5195; Laws, 1934, ch. 146; Laws, 1936, ch. 165.

Editor's Note — Section 81-1-57 provides that wherever the words "state comptroller" or "comptroller" are used when referring to the office of state comptroller of banks, they shall be construed to mean the commissioner of banking and consumer finance.

Section 81-1-117 abolished the office of state comptroller, and provided that the functions, duties and responsibilities would be assumed by the commissioner of banking and consumer finance.

Cross References — State-chartered banks having and possessing the rights, powers, privileges, immunities, duties and obligations of a national bank having its principal place of business in this state, irrespective of any conflict with the provisions of this section, see § 81-5-1(9).

JUDICIAL DECISIONS

1. In general.

Acquisition by bank of stock of another bank held a mere ultra vires act of which only state could complain. People's Bank v. Lamar County Bank, 107 Miss. 852, 66 So. 219 (1914), error overruled, 107 Miss. 852, 67 So. 961 (1915).

RESEARCH REFERENCES

Am Jur. 10 Am. Jur. 2d, Banks and Financial Institutions § 613.

CJS. 9 C.J.S., Banks and Banking § 247.

§ 81-5-23. Preferred stock; issuance authorized.

Banks may, with the approval of the state comptroller, and by a vote of stockholders owning a majority of the stock of such bank, upon not less than five (5) days' notice, given by registered mail, pursuant to action taken by their boards of directors, issue preferred stock of one or more classes in such amount and with such par value as shall be approved by the said comptroller, and may make such amendments to their charters as may be necessary for this purpose; but, in the case of a newly organized bank which has not yet issued common stock, the requirement of notice to and vote of stockholders shall not apply.

The holders of such preferred stock shall be entitled to receive such cumulative dividends at a stipulated rate and shall have such voting and conversion rights and such control of management, and such stock shall be subject to retirement in such manner and upon such conditions as may be provided in the charter, with the approval of the state comptroller. The holders of such preferred stock shall not be held individually responsible as such holders for any debts, contracts or engagements of such bank, and shall not be liable for assessments to restore impairments in the capital of such bank as provided by law with reference to the holders of common stock.

Preferred stock issued by any bank in this state shall be exempt from all state, county, municipal, levee district, and other ad valorem taxes so long as the same shall be held by an agency of the federal government.

The acts of any board of directors of any banking corporation organized and operating under the laws of the State of Mississippi, insofar as such acts pertain to the issuance of preferred stock which may have heretofore been issued, are hereby in all particulars validated.

No dividend shall be declared or paid on common stock until the cumulated dividends on the preferred stock shall have been paid in full; and, if the corporation is placed in either voluntary or involuntary liquidation, no payment shall be made to the holders of the common stock until the owners of the preferred stock shall have been paid in full the par value of such preferred stock plus all accumulated dividends.

SOURCES: Codes, 1942, § 5215; Laws, 1934, ch. 146; Laws, 1966, ch. 251, § 1; Laws, 1980, ch. 414, eff from and after July 1, 1980.

Editor's Note — Section 81-1-57 provides that wherever the words "state comptroller" or "comptroller" are used when referring to the office of state comptroller of banks, they shall be construed to mean the commissioner of banking and consumer finance.

Section 81-1-117 abolished the office of state comptroller, and provided that the functions, duties and responsibilities would be assumed by the commissioner of banking and consumer finance.

Cross References — State-chartered banks having and possessing the rights, powers, privileges, immunities, duties and obligations of a national bank having its principal place of business in this state, irrespective of any conflict with the provisions of this section, see § 81-5-1(9).

RESEARCH REFERENCES

ALR. Validity of cancelation of accrued dividends on preferred corporate stock. 8 A.L.R.2d 893.

Rights of preferred stockholders as to past or accumulated dividends in going concern. 27 A.L.R.2d 1073.

Am Jur. 10 Am. Jur. 2d, Banks and Financial Institutions §§ 28 et seq., 308, 328.

§ 81-5-25. Investments in stock of small business investment companies.

Shares of stock issued by small business investment companies, incorporated in this state and licensed under the provisions of the Small Business Investment Act of 1958, Public Law 699, 85th Congress, and any amendments thereto, shall be legal investments for state chartered banks and trust companies, to the same extent that shares of small business investment companies are eligible for purchase by national banks under the provisions of said Small Business Investment Act of 1958, and any amendments thereto.

SOURCES: Codes, 1942, § 5224.7; Laws, 1962, ch. 178, eff from and after passage (approved May 22, 1962).

Cross References — State-chartered banks having and possessing the rights, powers, privileges, immunities, duties and obligations of a national bank having its principal place of business in this state, irrespective of any conflict with the provisions of this section, see § 81-5-1(9).

§ 81-5-27. Liability of stockholders.

The stockholders of every bank shall be individually liable, actually and ratably, and not for one another, for the benefit of the depositors in said bank at the amount of their stock at the par value thereof, and in addition to said stock. However, persons holding stock as executors, administrators, guardians or trustees shall not be personally liable as stockholders, but the assets and funds in their hands constituting the trust shall be liable to the same extent as the testator, intestate, ward, or person interested in such trust fund would be, if living or competent to act. Persons holding stock as collateral security shall not be personally liable as stockholders, but the person pledging such stock shall be deemed the stockholder and liable under this section. Such double liability may be enforced in a suit at law or in equity by the receiver of any bank in process of liquidation. Such suit, however, shall be brought within six years from the date the bank went into liquidation and not thereafter. Such double liability shall not apply, however, to stock in any bank organized, after April 2, 1934, nor to stock in any bank open for business on April 2, 1934, provided such bank is a member of the Federal Deposit Insurance Corporation, or any other similar agency created by the laws of the United States.

SOURCES: Codes, 1942, § 5280; Laws, 1934, ch. 146; Laws, 1936, ch. 166.

Cross References — State-chartered banks having and possessing the rights, powers, privileges, immunities, duties and obligations of a national bank having its principal place of business in this state, irrespective of any conflict with the provisions of this section, see § 81-5-1(9).

Release of double liability in event of liquidation by depositors, see § 81-9-51.

JUDICIAL DECISIONS

1. In general.
2. Double liability, generally.
3. Set-off of deposits against liability.
4. Persons subject to liability.
5. Transfer of stock or settlement.
6. Persons entitled to benefit.
7. Accrual of liability.
8. Action to enforce liability.
9. —Parties.
10. —Limitations.
11. Miscellaneous.

1. In general.

Imposition of stockholders' double liability was not invalid as impairing the obligation of contract, where the power to amend or repeal was reserved by the legislature. Pate v. Bank of Newton, 116 Miss. 666, 77 So. 601 (1918).

2. Double liability, generally.

Statute which repealed provision of former statute with respect to double liability of stockholders of insolvent state bank and re-enacted it verbatim with certain stated exceptions held to have continued double liability theretofore existing in force, where it was clear from terms of statute that it was intended to include within the terms of double liability all those classes which were not excluded by its terms. Rather v. Moore, 179 Miss. 78, 173 So. 664 (1937).

Law imposing liability on stockholders of insolvent bank must be strictly construed. Thompson v. Person, 177 Miss. 63, 170 So. 694 (1936); Gift v. Love, 164 Miss. 442, 144 So. 562, 86 A.L.R. 63 (1932); Mellott v. Love, 152 Miss. 860, 119 So. 913, 64 A.L.R. 968 (1929).

Double liability is imposed by the statute upon stockholders or banks whether incorporated before or after the Banking Act was passed, but this liability does not extend to deposits which were actually made before the passage of the act (Laws 1914, c 124). Pate v. Bank of Newton, 116 Miss. 666, 77 So. 601 (1918).

This section [Code 1942, § 5280] held not an injustice to stockholders. Pate v. Bank of Newton, 116 Miss. 666, 77 So. 601 (1918).

3. Set-off of deposits against liability.

Shareholders of an insolvent bank could set off the amount due them by the bank under a trust agreement against their liability to the Superintendent of Banks. Anderson v. Love, 169 Miss. 237, 153 So. 369 (1934).

4. Persons subject to liability.

Where bank stockholder sold stock to sister prior to bank failure and subsequent examination showed bank was solvent, seller held not subject to statutory double liability as stockholder notwithstanding there was no transfer on stock book of bank and that statute makes stock book prima facie evidence of ownership, in view of rule of strict construction of double liability statute. Thompson v. Person, 177 Miss. 63, 170 So. 694 (1936).

Where other assets received by infant legatees along with bank stock exceeded stockholder's liability on such stock, assets in hands of infants' respective guardians held liable for amount of stockholder's liability on bank's failure. Carlisle v. Love, 170 Miss. 621, 155 So. 197 (1934).

No stockholder's liability rested on guardian or ward where orders relating to investment of ward's funds in bank stock were invalid and ward, aged twenty, repudiated investment. Carlisle v. Love, 170 Miss. 621, 155 So. 197 (1934).

Father who transferred his bank stock to himself as trustee for his infant children held liable as stockholder on bank's suspension during minority of such infants, though examination after such transfer showed that bank was solvent. Carlisle v. Love, 170 Miss. 621, 155 So. 197 (1934).

To justify application of personal deposit of heirs in discharge of deceased's bank stock liability, superintendent of banks must show heirs were personally liable therefor. Love v. Hooker, 168 Miss. 94, 150 So. 917 (1933).

Evidence did not show heirs were personally liable for deceased's bank stock liability so that court properly refused to permit superintendent of banks to apply their personal deposit in discharge of deceased's liability. Love v. Hooker, 168 Miss. 94, 150 So. 917 (1933).

Minor stockholder disaffirming purchase after bank's insolvency was not subject to statutory liability. Mellott v. Love, 152 Miss. 860, 119 So. 913, 64 A.L.R. 968 (1929).

5. Transfer of stock or settlement.

Father who transferred his bank stock to himself as trustee for his infant children held liable as stockholder on bank's suspension during minority of such infants, though examination after such transfer showed that bank was solvent. (§ 3803, Code 1930.) Carlisle v. Love, 170 Miss. 621, 155 So. 197 (1934).

Superintendent of banks, seeking to enforce bank stockholder's double liability, held not estopped by unauthorized approval of bank's compromise settlement. Gift v. Love, 164 Miss. 442, 144 So. 562, 86 A.L.R. 63 (1932).

Before bank went into liquidation, no compromise settlement could be made between bank, stockholder's heirs, and testamentary trustee, which would result in defeating bank's right to enforce double liability. Gift v. Love, 164 Miss. 442, 144 So. 562, 86 A.L.R. 63 (1932).

That bank quitclaimed deceased stockholder's land to heirs, in consideration of its stock, held not to preclude enforcement of double liability. Gift v. Love, 164 Miss. 442, 144 So. 562, 86 A.L.R. 63 (1932).

Bank stockholder's retransfer of stock to bank in satisfaction of a debt held not to release stockholder's double liability until next examination of bank. (§ 3803, Code 1930.) Gift v. Love, 164 Miss. 442, 144 So. 562, 86 A.L.R. 63 (1932).

6. Persons entitled to benefit.

Fees of auditors and a special master, in bank liquidation proceedings, were properly a part of the taxable costs involving the liquidation, and were entitled to preference upon distribution of the assets, first as against general assets and then as against any other funds in the hands of the receiver, including funds collected on stockholders' liability. Taylor, Powell & Wilson v. Parker, 193 Miss. 514, 10 So. 2d 192 (1942).

The stockholder's liability is not a general asset of an insolvent bank, but is a special trust fund provided for the benefit of all depositors, and for them alone. Board of Levee Comm'rs v. Parker, 187 Miss. 621, 193 So. 346 (1940).

Money paid by stockholders of insolvent bank under statute inures to benefit of all depositors of bank and not only to those whose deposits are guaranteed under § 36, c. 172, Laws 1922. United States Fid. & Guar. Co. v. Commercial Bank, 156 Miss. 293, 125 So. 839 (1930).

7. Accrual of liability.

Statutory liability of bank stockholder accrued at time bank became insolvent and closed. Gray v. Love, 173 Miss. 390, 161 So. 679 (1935).

When bank became insolvent and closed, deceased stockholder's double liability matured, standing in same class as other unsecured debts, and became charge on estate's entire personalty and realty. Gift v. Love, 164 Miss. 442, 144 So. 562, 86 A.L.R. 63 (1932).

The liability of the stockholder, as to a deposit, accrues with the making of the deposit, and not of the date of granting a charter to do business. Pate v. Bank of Newton, 116 Miss. 666, 77 So. 601 (1918).

8. Action to enforce liability.

Superintendent of Banks need not formally declare bank in liquidation before suing stockholders for statutory liability, but need only make it reasonably appear that assets of bank will be insufficient to pay depositors. Anderson v. Love, 169 Miss. 237, 153 So. 369 (1934).

That bank, without consideration, quitclaimed deceased bank stockholder's land to heirs, pursuant to compromise settlement, and took bank stock in satisfaction of bank's claim for loan held not to preclude superintendent of banks, after bank closed, from enforcing stockholder's double liability against land quitclaimed. Gift v. Love, 164 Miss. 442, 144 So. 562, 86 A.L.R. 63 (1932).

Single suit under double liability statute, being in the nature of accounting, is maintainable against all stockholders. Abbey v. Delta Bank & Trust Co., 139 Miss. 36, 103 So. 801 (1925).

Stockholders' double liability is a primary and not a secondary liability, and bank examiner can bring action against stockholders as soon as it is reasonably apparent that assets are insufficient to pay depositors. Pate v. Bank of Newton, 116 Miss. 666, 77 So. 601 (1918).

9. —Parties.

Actions against stockholders of insolvent state bank for their double liability held maintainable, notwithstanding all the stockholders were not joined in one action, where plea raising question did not name any necessary stockholders omitted from bill. Rather v. Moore, 179 Miss. 78, 173 So. 664 (1937).

Receiver of insolvent bank would not be required to join in suit against stockholders for their double liability those stockholders who had recognized and paid their obligations, and insolvent stockholders, irrespective of whether all stockholders liable should be joined in one suit. Rather v. Moore, 179 Miss. 78, 173 So. 664 (1937).

Superintendent of banks could join all bank stockholders in suit to recover statutory liability. Anderson v. Love, 169 Miss. 237, 153 So. 369 (1934).

Chancery court had jurisdiction over nonresident stockholder who was made party defendant to suit by superintendent of banks against all stockholders of bank to recover statutory liability from stockholders, absent contention that none of stockholders resided in county where suit was brought. Anderson v. Love, 169 Miss. 237, 153 So. 369 (1934).

10. —Limitations.

Six-year period held applicable to stockholders of insolvent bank for double liability. Rather v. Moore, 179 Miss. 78, 173 So. 664 (1937).

Stockholder's double liability held not a penalty. Rather v. Moore, 179 Miss. 78, 173 So. 664 (1937).

Where statutory liability of stockholder of bank accrued before death, but claim not probated, suit to recover after expiration of period for presenting claims held barred. Gray v. Love, 173 Miss. 390, 161 So. 679 (1935).

11. Miscellaneous.

The executors of a deceased stockholder, not the defunct bank, were entitled to dividends up to the amount paid by the decedent in satisfaction of her double liability. Somerville v. Anderson, 202 Miss. 157, 30 So. 2d 686 (1947).

Where a stockholder who had paid over the full amount of her stock in compliance with this section [Code 1942, § 5280] to trustees in charge of the assets of the old bank after its reorganization, and thereafter she traded her beneficial interest to such trustees for a farm, payment of liquidating dividends by the trustees was at least prima facie unauthorized. Somerville v. Anderson, 202 Miss. 157, 30 So. 2d 686 (1947).

RESEARCH REFERENCES

Am Jur. 4 Am. Jur. Pl & Pr Forms (Rev), Banks, Forms 11-13.

CJS. 9 C.J.S., Banks and Banking §§ 5-47 et seq.

Practice References. Young, Trial Handbook for Mississippi Lawyers § 32:19.

§ 81-5-28. Bank holding companies; definitions; control of banks.

(1) As used in this section, unless the context clearly requires otherwise:

(a) "Bank" means any company that accepts deposits in Mississippi that are insured under the provisions of the Federal Deposit Insurance Act, 12 U.S.C. 1811 et seq., as amended; provided, however, that the term "bank" shall not include a company engaged solely in the trust business, all or substantially all of the deposits of which are in trust funds and are received in a bona fide fiduciary capacity.

(b) "Bank holding company" means any company which is a bank holding company under the provisions of the Federal Bank Holding Company Act of 1956, 12 U.S.C. 1841 et seq., as amended.

(c) "Company" has the meaning assigned in Section 2(b) of the Federal Bank Holding Company Act of 1956, 12 U.S.C. 1841(b), as amended.

(d) "Control" has the meaning assigned in Sections 2(a)(2) and (3) of the Federal Bank Holding Company Act of 1956, 12 U.S.C. 1841(a)(2) and (3), as amended, except that the reference therein to "the board" shall be deemed to refer to the Mississippi Commissioner of Banking and Consumer Finance.

(2) No bank holding company shall control a bank unless the bank is a bank as defined in Section 2(c) of the Federal Bank Holding Company Act of 1956, 12 U.S.C. 1841(c), as amended.

(3) No company that is not a bank holding company shall control a bank.

(4) The Mississippi Commissioner of Banking and Consumer Finance shall have the power to enforce the prohibitions of this section by seeking to enjoin any violation, by issuing cease and desist orders, by imposing administrative fines or penalties, and by any other remedies that are provided by law.

SOURCES: Laws, 1985, ch. 329, eff from and after passage (approved March 15, 1985).

Cross References — State-chartered banks having and possessing the rights, powers, privileges, immunities, duties and obligations of a national bank having its principal place of business in this state, irrespective of any conflict with the provisions of this section, see § 81-5-1(9).

Provision that, prior to approving acquisition of a Mississippi bank or bank holding company by a regional bank holding company, the Commissioner must determine that the acquisition will not result in a violation of this section, see § 81-8-3.

Federal Aspects — The Federal Deposit Insurance Act appears as 16 USCS §§ 1811 et seq.

The Federal Bank Holding Company Act of 1956 appears as 17 USCS §§ 1841 et seq.

RESEARCH REFERENCES

ALR. Application to banks and banking institutions of antimonopoly or antitrust laws. 83 A.L.R.2d 374.

Right of trustee of land having interest therein to purchase on his own behalf in association with foreclosure by third-party lienor, in absence of express trust provision. 30 A.L.R.4th 732.

Construction and application of § 4(c)(8) of Bank Holding Company Act of 1956 (12 USCS § 1843(c)(8)), permitting bank holding companies to acquire shares in companies whose activities are closely related to banking. 31 A.L.R. Fed. 520.

Construction and application of "grandfather proviso" of § 4(a)(2) of Bank Holding Company Act (12 USCS § 1843(a)(2)). 35 A.L.R. Fed. 942.

Construction and application of Bank Holding Company Act that application for approval to acquire control of bank shall be deemed granted if Federal Reserve Board does not act on application within 91 days (12 USCS § 1842(b)). 38 A.L.R. Fed. 919.

Denial by Board of Governors of Federal Reserve System of application for bank merger, consolidation, or acquisition on anticompetitive grounds under § 3(c) of Bank Holding Company Act of 1956 (12 USCS § 1842(c)). 71 A.L.R. Fed. 438.

Am Jur. 54 Am. Jur. 2d, Monopolies, Restraints of Trade, and Unfair Trade Practices §§ 709-711 et seq.

CJS. 9 C.J.S., Banks and Banking §§ 6, 7 et seq.

§ 81-5-29. Corporations may be formed to purchase, hold and own bank assets.

Corporations may be formed to purchase, hold and own bank assets. By and with the consent and approval of the Commissioner of Banking and Consumer Finance, corporations may be formed in this state for the purpose of purchasing, holding, owning, dealing in, lending on and borrowing on assets of banks, either open or in liquidation. From and after July 1, 2014, any proposed transfer of bank assets to be purchased, held or owned by a corporation authorized by this section shall be subject to the prior consent and approval of the commissioner. By and with the consent and approval of the commissioner, banks and receivers of banks may purchase any stock issued by such corporations, which shall have all the general corporate powers of corporations created under the general corporation laws of this state. By and with the consent and approval of the commissioner, banks may purchase and deal in any obligations of indebtedness issued by such corporations. In addition to general power to issue stock and borrow money, such corporation shall have specific power to issue stocks, common or preferred, to all agencies of the federal government, and to borrow money from and pledge assets to all such agencies. The commissioner shall have general supervision of the organization, operation and business of such corporation, and may issue and enforce regulations with reference thereto. The name of all such corporations shall include the words "bank securities corporation."

SOURCES: Codes, 1942, § 5196; Laws, 1934, ch. 146; Laws, 1966, ch. 247, § 1; Laws, 2014, ch. 359, § 2, eff from and after July 1, 2014.

Amendment Notes — The 2014 amendment substituted "Commission of Banking and Consumer Finance" for "state comptroller" in the second sentence; inserted the third sentence; and substituted "commissioner" for "state comptroller" in the remaining sentences.

Cross References — Incorporation of banks, see §§ 81-3-5 et seq.

State-chartered banks having and possessing the rights, powers, privileges, immunities, duties and obligations of a national bank having its principal place of business in this state, irrespective of any conflict with the provisions of this section, see § 81-5-1(9).

Ownership by bank of stock of other banks, see § 81-5-21.

Prohibition against voting trusts, see § 81-5-31.

§ 81-5-31. Voting trusts prohibited.

The transfer of any part of the stock of a state bank to trustees solely or primarily that they may vote the same at annual elections and stockholders' meetings — "voting trusts" as they are generally known — is expressly prohibited. A violation of this section by any bank or banks shall constitute a breach of law, and subject any such bank or banks to liquidation and forfeiture of their respective charters; provided, however, that this section shall not apply to any stock owned by an agency of the federal government.

SOURCES: Codes, 1942, § 5197; Laws, 1934, ch. 146; Laws, 1966, ch. 248, § 1, eff from and after passage (approved April 11, 1966).

Cross References — State-chartered banks having and possessing the rights, powers, privileges, immunities, duties and obligations of a national bank having its principal place of business in this state, irrespective of any conflict with the provisions of this section, see § 81-5-1(9).

§ 81-5-33. Powers in regard to trusts.

Banks may accept and execute all such trusts and perform such duties of every description as may be committed to them by any person or corporation or that may be committed or transferred to them by order of any court of record. They may receive money in trust, take and accept by grant, assignment, transfer, devise or bequest, and hold any real or personal estate or trusts created according to the laws of this or any other state or of the United States, and execute those legal trusts in regard to the same, on such terms as may be directed or agreed upon. They may act as agent for the investment of money or the management of property for other persons, and as agent for persons and corporations for the purpose of issuing, registering, transferring or countersigning the certificates of stock, bonds or other evidences of debt of any corporation, association, municipality, state, county or public authority on such terms as may be agreed upon. They also may act as guardian for any minor or person with mental illness under the appointment of any court of record having jurisdiction of the person or estate of the minor or person with mental illness and may act as administrator or executor of the estate of any deceased person. They may act as agent or attorney in fact and as commissioner for the sale of property, both real and personal, and may act as assignee or receiver, or as trustee in mortgages or bond issues, or in any other fiduciary capacity authorized by law. They may accept trust funds or other property upon specially agreed terms and pay or deliver the same to the owners, beneficiaries or others, as the case may be, when and as the same should be paid or delivered according to the terms of the trust agreement under which it is held. Whenever under the laws of this or any other state or under the rule or order of any court, the execution of a bond for the protection of a private or court trust is required, a trust company shall be authorized to execute the bond for the protection of any trust or trust estate being administered by it.

Banking corporations created, organized and doing business under the laws of the State of Mississippi may exercise, without amendment of their charters, and under their charter authority to engage in the general business of banking, all or any of the foregoing powers. However, before any bank whose charter merely authorizes the exercise of general banking functions may exercise those powers, the previous written consent of the Commissioner of Banking and Consumer Finance shall be obtained.

Banks exercising any or all of those powers shall segregate all assets held in any fiduciary capacity from the general assets of the bank and shall keep a separate set of books and records showing in proper detail all transactions engaged in under the authority of this section or under the authority granted to them in their charter or otherwise. Those books and records shall be inspected and examined by the state bank examiners at each and every examination of the bank.

No bank shall receive in its trust department deposits of current funds subject to check or the deposit of checks, drafts, bills of exchange or other items for collection or exchange purposes. Funds deposited or held in trust by the bank awaiting investment or distribution shall be carried in a separate account and shall not be used by the bank in the conduct of its business, unless it first sets aside in the trust department United States bonds or bonds of the State of Mississippi or any subdivision of the state, the market value of which shall at all times be not less than ten percent (10%) in excess of the total funds so held, exclusive of the portion of funds insured by the Federal Deposit Insurance Corporation.

In the event of the failure or liquidation of the bank, the owners of the funds held in trust for investment or distribution shall have a prior lien on the bonds or other securities so set apart in addition to their claim against the assets of the bank.

In any case in which the laws of this state require that one acting as trustee, executor, administrator or in any fiduciary capacity must take an oath or make an affidavit, the president, vice president, cashier or trust officer of a bank may take the necessary oath or execute the necessary affidavit.

In making investments of trust funds, it shall be unlawful for any bank to purchase securities from itself or to purchase securities in which it may be interested, directly or indirectly. However, any bank, including a national bank, authorized to do business in this state in a fiduciary capacity may, unless prohibited or otherwise limited by the instrument governing the fiduciary relationship, in the exercise of its investment discretion or at the direction of another person authorized to direct the investment of funds held by the bank as fiduciary, invest and reinvest in the securities of, or other interests in, any open-end or closed-end management type investment company or investment trust registered under the Investment Company Act of 1940, 15 USCS Section 80a-1, et seq., as amended, notwithstanding that the banking institution or affiliate of the banking institution provides services to the investment company or investment trust, such as that of an investment advisor, custodian, transfer agent, registrar, sponsor, distributor, manager or otherwise, and receives reasonable remuneration for those services, so long as the total compensation paid by the trust or custodial estate as trustee's fees and mutual fund fees is reasonable, taking into account the nature and extent of the trustee's duties, the nature and extent of the services provided to the investment company or investment trust, and the total compensation, costs and fees that would otherwise be paid, directly or indirectly, by the trust or custodial estate if the investment were made in an investment company or investment trust for which the bank or its affiliates provided no services. With respect to any funds so invested, the banking institution shall make available by statement, prospectus or otherwise to all current income beneficiaries of an account the basis, expressed as a percentage of asset value or otherwise, upon which the remuneration is calculated. No bank shall lend to any officer, director or employee of the bank any funds held in trust by it, and any officer, director or employee making a loan, or to whom such a loan is made, shall be guilty of a felony and, upon conviction, may be fined not more than Five Thousand Dollars ($5,000.00) or imprisoned in the State Penitentiary for not more than five (5) years, or by both that fine and imprisonment, in the discretion of the court.

SOURCES: Codes, 1942, § 5198; Laws, 1934, ch. 146; Laws, 1936, ch. 165; Laws, 1992, ch. 347, § 1; Laws, 2008, ch. 442, § 21, eff from and after July 1, 2008.

Cross References — Banks as depositories, see §§ 27-105-1 et seq.

Federally insured loans to veterans, see § 35-3-19.

Investment in mortgages insured by Federal Housing Administration, see §§ 43-33-301 et seq.

Bonds of the Wavelands Regional Wastewater Management District as legal investments and securities, see § 49-17-199.

Bonds of the Mississippi Gulf Coast Regional Wastewater Authority as legal investments and securities, see § 49-17-339.

Investment in farm credit securities, see § 75-69-9.

State-chartered banks having and possessing the rights, powers, privileges, immunities, duties and obligations of a national bank having its principal place of business in this state, irrespective of any conflict with the provisions of this section, see § 81-5-1(9).

Multistate, state and limited liability trust institutions, see § 81-27-1.001 et seq.

Power of bank to act as administrator, see § 91-7-63.

Tennessee Valley Authority bonds and obligations as legal investments for banks, see § 91-13-11.

Imposition of standard state assessment in addition to all court-imposed fines or other penalties for any felony violation, see § 99-19-73.

Federal Aspects — Investment Company Act of 1940, see 15 USCS §§ 80a-1 et seq.

JUDICIAL DECISIONS

1. In general.

Bank does not hold proceeds of draft in trust under Code 1906, § 4852 (see § 7881), which provides for retention of money on collection of draft with bill of lading attached. Alexander County Nat'l Bank v. Conner, 110 Miss. 653, 70 So. 827 (1916).

ATTORNEY GENERAL OPINIONS

Section 27-105-365 deals specifically with the handling of community hospital funds, it is controlling over the provisions of § 81-5-33, which deals with bank trust funds in general, when dealing with a trust agreement for a community hospital. Galloway, September 27, 1995, A.G. Op. #95-0460.

RESEARCH REFERENCES

ALR. Power and capacity of bank to take devise or bequest. 8 A.L.R.2d 454.

Retrospective application of statutes relating to trust investments. 35 A.L.R.2d 991.

Construction and application of statutes prohibiting or limiting loans to bank's officers or directors. 49 A.L.R.3d 727.

Guardian's authority, without seeking court approval, to exercise ward's right to revoke trust. 53 A.L.R.4th 1297.

Am Jur. 10 Am. Jur. 2d, Banks and Financial Institutions §§ 595 et seq., 617 et seq., 519.

CJS. 9 C.J.S., Banks and Banking §§ 223 et seq.

§ 81-5-34. Accounts of administrators, executors, guardians, trustees, and other fiduciaries.

Any bank, including a national bank, may accept accounts in the name of any administrator, executor, guardian, trustee or other fiduciary in trust for a named beneficiary or beneficiaries. Any such fiduciary shall have the power to make payments upon and to withdraw any such account, in whole or in part. The withdrawal value of any such account or other rights relating thereto may be paid or delivered, in whole or in part, to such fiduciary, without regard to any notice to the contrary, as long as such fiduciary is living. The payment or delivery to any such fiduciary or a receipt of acquittance signed by any such fiduciary to whom any such payment or any such delivery of rights is made shall be valid and sufficient release and discharge of any bank for the payment or delivery so made. Whenever a person holding an account in a fiduciary capacity dies, and no written notice of the revocation or termination of the trust relationship has been given to a bank and the bank has no notice of any other disposition of the trust estate, the withdrawal value of such account or other rights relating thereto may, at the option of a bank, be paid or delivered, in whole or in part, to the beneficiary or beneficiaries of such trust. Whenever an account shall be opened by any person describing himself in opening such account as trustee for another, and there is no other or further notice of the existence and terms of a legal and valid trust, then such description shall be given in writing to such bank. In the event of the death of the person so described as trustee, the withdrawal value of such account or any part thereof may be paid to the person for whom the account was thus stated to have been opened, and such account and all additions thereto shall be the property of such person, unless prior to payment the trust agreement is presented to the bank showing a contrary interest. When made in accord with this section, the payment or delivery to any such beneficiary, beneficiaries or designated person, or a receipt or acquittance signed by any such beneficiary, beneficiaries or designated person for any such payment or delivery, shall be valid and sufficient release and discharge of a bank for the payment or delivery so made. Trust accounts permitted by this section shall not be required to be acknowledged and recorded. When an account is opened in a form described in this section, the right set forth in Section 81-5-62 shall apply. No bank paying any beneficiary in accordance with the provisions of this section shall thereby be liable for any estate, inheritance or succession taxes which may be due this state. The term "accounts" or "account" as used in this section shall include, but not be limited to, any form of deposit or account, such as a savings account, checking account, time deposit, demand deposit or certificate of deposit, whether negotiable, non-negotiable or otherwise.

SOURCES: Laws, 1984, ch. 326, § 1; Laws, 1988, ch. 484, § 1, eff from and after passage (approved April 27, 1988).

Cross References — State-chartered banks having and possessing the rights, powers, privileges, immunities, duties and obligations of a national bank having its

principal place of business in this state, irrespective of any conflict with the provisions of this section, see § 81-5-1(9).

§ 81-5-35. State and national banks acting in fiduciary capacity not required to file bond; exception.

No state or national bank domiciled in this state and duly authorized by law to act in a fiduciary capacity shall be required to make or file any bond or other security for the faithful performance of its duty when acting as executor, administrator, guardian, conservator, trustee, or in any other fiduciary capacity, unless the instrument creating any such trust or the court having jurisdiction thereof shall specifically direct that such bond or other security shall be given for the performance of such trust and shall fix the amount thereof. The chancery court or chancellor in vacation, having jurisdiction over any such estate or trust existing at the time of the enactment of this statute may, in its discretion, cancel any such bond or release any such security and discharge the surety or sureties thereon. However, the retroactive effect of this section shall not apply to the release of any such bond or security or surety on any estate, guardianship, or trust on which a bond or security or surety was required as a result of the failure of a probated will to waive bond, security, or surety.

SOURCES: Codes 1942, § 5198.3; Laws, 1968, ch. 252, eff from and after passage (approved June 24, 1968).

Cross References — State-chartered banks having and possessing the rights, powers, privileges, immunities, duties and obligations of a national bank having its principal place of business in this state, irrespective of any conflict with the provisions of this section, see § 81-5-1(9).

§ 81-5-37. Uniform Common Trust Fund Law.

(1) Any bank or trust company qualified to act as a fiduciary in this state may establish common trust funds for the purpose of furnishing investments to itself as fiduciary, or to itself and others, as co-fiduciaries; and may, as such fiduciary or co-fiduciary, invest funds which it lawfully holds for investment in interests in such common trust funds, if such investment is not prohibited by the instrument, judgment, decree, or order creating such fiduciary relationship, and if, in the case of co-fiduciaries, the bank or trust company procures the consent of its co-fiduciary or co-fiduciaries to such investment.

(2) Unless ordered by a court of competent jurisdiction the bank or trust company operating such common trust funds is not required to render a court accounting with regard to such funds; but it may, by application to the chancery court, secure approval of such an accounting on such conditions as the court may establish.

(3) This section shall be so interpreted and construed as to effectuate the general purpose of making uniform the law of those states which enact the Uniform Common Trust Fund Act.

(4) This section may be cited as the Uniform Common Trust Fund Law.

SOURCES: Codes, 1942, § 5198.5; Laws, 1950, ch. 328, §§ 1-7.

Cross References — State-chartered banks having and possessing the rights, powers, privileges, immunities, duties and obligations of a national bank having its principal place of business in this state, irrespective of any conflict with the provisions of this section, see § 81-5-1(9).

Multistate, state and limited liability trust institutions, see § 81-27-1.001 et seq.

Comparable Laws from other States — Alabama Code, §§ 5-12A-1 through 5-12A-15.

Arkansas Code Annotated, §§ 28-69-201, 28-69-202.

Tennessee Code Annotated, §§ 35-4-101 through 35-4-105.

Texas Property Code, §§ 113.171, 113.172.

RESEARCH REFERENCES

ALR. Construction of Uniform Common Trust Fund Act. 64 A.L.R.2d 268.

Am Jur. Jurisdictions adopting Uniform Common Trust Fund Law, see Am. Jur. 2d Desk Book, Item No. 124.

§ 81-5-39. Banks may register securities held in fiduciary capacity in name of bank's nominee.

Whenever any bank or trust company organized under the laws of this state or any national bank doing business in this state is acting as trustee, guardian, executor, administrator, or other fiduciary and has a nominee, whether an individual, a corporation or a partnership, in whose name stocks, bonds, debentures, or any other corporate securities in registered form, may be registered, it shall be lawful and any such fiduciary is hereby authorized to register any such securities in the name of such nominee without disclosure of the trust or other fiduciary relationship on the face of the instrument evidencing such securities or in the bond registry or on the books of the corporation issuing the same, provided that:

(a) the books and records kept by the fiduciary and the accounts rendered by it shall clearly reflect the ownership of such securities by the fiduciary,

(b) the securities registered in the name of the nominee shall at all times be retained in the possession of the fiduciary and the nominee shall have no access thereto except under the immediate supervision of the fiduciary, and

(c) the fiduciary shall be personally liable for any loss to the trust or estate resulting from any act or neglect of such nominee with respect to any securities registered in the name of the nominee.

Whenever any such bank or trust company is acting jointly with others as trustee or executor of a trust or estate it shall be lawful by agreement with such other fiduciary to register the securities of such trust or estate in the name of such bank or trust company's nominee; and in the event two such banks or trust companies shall be acting as co-fiduciaries it shall be lawful to register the securities of the trust or estate in the name of the nominee of either fiduciary or by agreement to register a proportionate part thereof in the name of the nominee of each fiduciary.

SOURCES: Codes, 1942, § 5279.5; Laws, 1956, ch. 144, eff July 1, 1956.

Cross References — State-chartered banks having and possessing the rights, powers, privileges, immunities, duties and obligations of a national bank having its principal place of business in this state, irrespective of any conflict with the provisions of this section, see § 81-5-1(9).

§ 81-5-40. Repealed.

Repealed by Laws, 1996, ch. 441, § 71, eff from and after May 1, 1997. [Laws, 1979, ch. 420, § 1]

Editor's Note — Former § 81-5-40 was entitled: Licensing of foreign banking corporations to do business.

§ 81-5-41. Foreign investors may engage in certain activities without qualifying.

(1) Without excluding other activities within this state, or activities outside this state involving taking security of real estate located in this state, which may not constitute transacting or engaging in business in this state, any of the following, not organized under the laws of the State of Mississippi and which has no place of business within this state: a mutual savings bank or mutual savings fund society, or any national banking association now or hereafter organized under the laws of the United States of America, or any bank or trust company now or hereafter incorporated or organized under the laws of any state of the United States of America (including the District of Columbia,) or any insurance company, or any corporation all the capital stock of which (except directors' qualifying shares) is owned by one or more such mutual savings banks, mutual savings fund societies, national banking associations, banks, trust companies or insurance companies, engaged in making or investing in loans secured by real estate or lending on the security of real estate, shall not be considered to be transacting or engaging in business in this state, by reason of carrying on in this state any one or more of the following activities:

(a) The acquisition or making of loans, or participation or interests therein, secured by deeds of trust, mortgages or mortgage notes on real property situated in Mississippi pursuant to commitment agreements or arrangements made prior to or following the origination or creation of said loans;

(b) The making directly or through or in participation with national or state banks having banking offices in this state or other Mississippi concerns engaged within this state in the business of making or servicing such loans, of loans secured by such mortgages or mortgage notes, or loans secured by assignments or pledges of obligations secured by such mortgages or mortgage notes;

(c) The ownership, modification, renewals, extensions, transfers or foreclosure of such loans, mortgages or mortgage notes, or the acceptance of substitute or additional obligators thereon;

(d) The maintenance of bank accounts in national or state banks having banking offices within this state in connection with the collection or servicing of such loans, mortgages or mortgage notes;

(e) The maintenance of depository or pledge-holder agreements or arrangements with national or state banks having banking offices within this state in connection with the taking of assignments or pledges of such loans, mortgages or mortgage notes;

(f) The making, collection and servicing of such loans, mortgages or mortgage notes directly or through a Mississippi concern engaged in the business within this state of servicing real estate loans;

(g) The taking of deeds to the mortgaged property for a reasonable period of time either in lieu of foreclosure or for the purpose of transferring title either to the Federal Housing Administration or to the Veterans Administration as the insurer or guarantor;

(h) The acquisition of title to real property for a reasonable period of time under foreclosure sale or from the owner in lieu of foreclosure;

(i) The management, rental, maintenance and sale, or the operating, maintaining, renting or otherwise dealing with, selling or disposing of real property acquired under foreclosure sale or by agreement in lieu thereof;

(j) The maintaining or defending of any actions or suits relating to such loans, deeds of trust, mortgages, mortgage notes, agreements or other arrangements or activities referred to herein or incidental thereto; and

(k) The physical inspection and appraisal of real property in Mississippi as security for mortgage notes or mortgages and negotiations for such loans.

(2) The acquisition or making of loans, or participations or interest therein, which are secured by mortgages or mortgage notes on real property located in this state and the doing of any or all the other acts or things with respect hereto enumerated in this section, by any such bank, trust company, or any other corporation when acting as fiduciary, trustee or agent of any trust, whether testamentary or inter vivos, including foundations and trusts established for the purpose of funding pension, profit-sharing or employee benefit plans, or by an endowed institution, foundation or eleemosynary corporation, or by any corporation chartered under the laws of another state as a group insurance and annuity association and engaged in the business of insurance, annuities, pensions and retirement plans for any group of persons, educational institutions and others, or by any corporation all the capital stock of which (except directors' qualifying shares) is owned by one or more of the entities referred to above, shall likewise not be considered to be transacting or engaging in business in this state; and any such corporation, when so acting as fiduciary, trustee or agent, and any such trust, endowed institution, foundation, eleemosynary corporation or group insurance and annuity association shall be entitled to all the rights, privileges and exceptions set forth in this section.

(3) Nothing in this section shall be construed as limiting the benefits and application of this section to loans insured or guaranteed by the Federal Housing Administration, the Veterans Administration, or any other governmental agency or department, and the benefits of this section shall extend to and include, all loans or participations or interests therein, secured by mortgages or mortgage notes on real property situated in Mississippi, whether or not insured or guaranteed.

(4) No such corporation, institution or entity coming under the provisions of this section, and confining its business operations in Mississippi within the limits herein provided, shall be required to qualify to do business in this state by filing its charter in the Office of the Secretary of State or to pay any tax or fee required to be paid by corporations under any law of this state. However, such exemption shall not include: (a) Ad valorem taxes assessed against any real or personal property which such corporation, institution or entity may own in the State of Mississippi; (b) Mississippi income, franchise and privilege tax which may result from the sale, ownership or control after acquisition of such property by foreclosure, or acquisition in lieu of foreclosure, either by virtue of the value of the specific piece of property so foreclosed or to which title is taken in lieu of foreclosure, or by virtue of the rental or other income realized from said property.

(5) Any bank, trust company, mutual savings bank, pension fund, mutual savings fund society, mutual banking association, insurance company or any other type of organization defined in this section and investing funds in Mississippi may sue or be sued within this state in relation to such mortgages or deeds of trust on real properties, securities or debts and service of process may be performed by service upon any custodian or agent appointed within the state. If no such custodian or agent has been appointed, the Secretary of State shall be and he is hereby appointed and shall remain as the duly authorized agent of such organization upon whom such service of process may be had. In cases where such organization is sued, the venue of such action shall be in the county of the residence of the plaintiffs, or any of them, except where land is involved, in which case, venue shall be in the county in which the land, or any part of it, is located.

The Secretary of State, upon the receipt of process by him on such organization, shall forthwith forward notice of the same by registered mail with return receipt requested to the post office address of such nonresident corporation, mutual savings bank or association and shall make a notation of said fact upon his process record to such effect.

(6) Nothing in this section shall be construed to permit any corporation to do business in violation of the Small Loan Law of the State of Mississippi nor of the laws of Mississippi governing the organization and operation of building and loan associations or societies, or savings and loan associations or societies, nor to limit the authority of corporations authorized to do unlimited business under the general laws of Mississippi, or to qualify to be so authorized.

SOURCES: Codes, 1942, § 5287.5; Laws, 1954, ch. 163, §§ 1-3 [¶¶ 1-3]; Laws, 1968, ch. 254, § 1; Laws, 1978, ch. 514, § 7; Laws, 1996, ch. 400, § 46, eff from and after passage (approved March 19, 1996).

Cross References — Actions for damages against nonresidents, see §§ 11-11-11, 13-3-57.

Small loan regulatory law, see §§ 75-67-101 et seq.

State-chartered banks having and possessing the rights, powers, privileges, immunities, duties and obligations of a national bank having its principal place of business in this state, irrespective of any conflict with the provisions of this section, see § 81-5-1(9).

Small loan law, see § 81-5-79.

RESEARCH REFERENCES

ALR. Place where corporation is doing business for purposes of state venue statute. 42 A.L.R.5th 221.

§ 81-5-43. Out-of-state banking and trust associations and corporations may act as executors, administrators, trustees and guardians.

(1) Any out-of-state banking corporation, or banking association, or out-of-state trust corporation, or association, which has its principal office in another state, authorized to act as executor or administrator of estates of decedents or trustees under wills and voluntary trust agreements, and as guardian of minors or incompetent persons, in the state where it has its principal office, may apply and act in such capacities in this state in ancillary or original proceedings, if similar domestic corporations or associations having their principal office in this state, which are authorized in this state to so act, are permitted to act in like capacity with no greater responsibilities or requirements in the state where such out-of-state corporation or association has its principal office.

(2) No such corporation or association shall act in any such capacities until it shall have appointed in writing the Secretary of State of Mississippi, and his successor, as its service agent, upon whom all process in any suit or proceeding against it may be served, and in such writing shall agree that any process against it which shall be served upon such Secretary of State shall be of the same legal force and validity as if served on such corporation or association. Such appointment shall continue so long as any liability shall remain outstanding against the corporation or banking association pertaining to any such matters.

(3) The court having jurisdiction shall require such corporation or association to give bond for the performance of such trust, unless otherwise provided in the trust agreement or will, in which case the provisions of the statutes in such cases made and provided shall apply. However, no such corporation or association shall be required to give any bond for the performance of such trust where such corporation or association is not required to

give bond for the performance of such trust under or by virtue of the laws of the state in which such corporation or association has its principal office.

(4) This section shall not prevent out-of-state banking corporations or banking associations or out-of-state trust corporations or associations from qualifying and acting in a fiduciary capacity in the State of Mississippi under wills or trust agreements heretofore executed, designating such out-of-state corporation or association as a fiduciary thereunder, nor shall this section prevent any such out-of-state corporation or association that has heretofore qualified as a fiduciary in the State of Mississippi from continuing to serve as a fiduciary in matters in which they have heretofore qualified in this state. This section shall not apply to trust agreements executed for the purpose of securing loans or guaranties thereof.

(5) For the purposes of this section, "out-of-state" means having the charter of incorporation issued by a state other than the State of Mississippi, or having its main office in a state other than the State of Mississippi; provided, however, this section shall not apply to an out-of-state national or state bank or out-of-state federal or state thrift which maintains a branch in Mississippi.

SOURCES: Codes, 1942, § 5198.7; Laws, 1956, ch. 145, §§ 1-5; Laws, 1962, ch. 174; Laws, 1996, ch. 400, § 47, eff from and after passage (approved March 19, 1996).

Cross References — State-chartered banks having and possessing the rights, powers, privileges, immunities, duties and obligations of a national bank having its principal place of business in this state, irrespective of any conflict with the provisions of this section, see § 81-5-1(9).

Executors and administrators generally, see §§ 91-7-35 et seq.

Guardianship generally, see §§ 93-13-1 et seq.

§ 81-5-45. Qualification and oath of directors; meetings; executive and auditing committee.

Every director of every state bank must be the owner, in his or her own right, of unencumbered stock therein to the amount of at least Two Hundred Dollars ($200.00) par value. He shall take and subscribe an annual oath that he will faithfully and diligently perform the duties of his office and will not knowingly violate or permit to be violated any provision of law. Such oath shall be immediately transmitted to the Department of Banking and Consumer Finance and filed in its office. Every executive officer, as defined in Regulation O promulgated by the Board of Governors of the Federal Reserve System, of every bank doing business under the laws of this state shall subscribe to a similar annual oath and immediately transmit the same to the Department of Banking and Consumer Finance. The board of directors of every banking corporation shall meet at least once each quarter in each calendar year and shall at such times consider generally the affairs of the bank. An executive and auditing committee selected by a majority of the board of directors shall meet at least in those months when the board of directors does not meet and shall at such times consider generally the affairs of the bank. However, if the board of directors of any bank meets every month, the executive and auditing committee of that bank shall meet at least two (2) times annually. The Commissioner of Banking and Consumer Finance, in his discretion, may prescribe such forms as he may deem necessary, which, when properly executed, shall reflect the activities of the board of directors or the executive and auditing committee. It shall be the responsibility of the board of directors and the executive and auditing committee at such meetings to complete the forms prescribed and furnished by the Department of Banking and Consumer Finance, and to file same in its office when required by the commissioner.

The results of the examinations by the board of directors and the executive and auditing committee shall be entered in the minutes of the bank.

SOURCES: Codes, 1942, § 5199; Laws, 1934, ch. 146; Laws, 1936, ch. 165; Laws, 1964, ch. 223; Laws, 1994, ch. 320, § 4; Laws, 1997, ch. 542, § 3, eff from and after passage (approved April 10, 1997).

Editor's Note — The 1997 amendment inserted "officer, as defined in Regulation O promulgated by the Board of Governors of the Federal Reserve System," in the third sentence.

Cross References — State-chartered banks having and possessing the rights, powers, privileges, immunities, duties and obligations of a national bank having its principal place of business in this state, irrespective of any conflict with the provisions of this section, see § 81-5-1(9).

Penalty for failure to perform duties or to conform to requirements of department of bank supervision, see § 81-5-103.

Standard of care for bank directors established, see § 81-5-105.

Directors of credit unions, see § 81-13-27.

JUDICIAL DECISIONS

1. In general.
2. Liability of directors and officers.
3. Actions against directors and officers-parties.
4. —Pleading.
5. —Limitations.

1. In general.

Directors not examining books and securities to determine bank's condition do not exercise ordinary care. Boyd v. Applewhite, 121 Miss. 879, 84 So. 16 (1920), modified, 123 Miss. 185, 85 So. 87 (1920).

General assignment for benefit of creditors by directors of bank without consent of stockholders held valid. Dodwell v. Rieves, 114 Miss. 4, 74 So. 770 (1916).

2. Liability of directors and officers.

Executrix of negligent director cannot sue surviving negligent directors for gross negligence, since one negligent director may not sue his associate directors for gross negligence. Boyd v. Applewhite, 121 Miss. 879, 84 So. 16 (1920), modified, 123 Miss. 185, 85 So. 87 (1920).

Directors whose negligent supervision renders minority stock valueless cannot plead ignorance. Boyd v. Applewhite, 121 Miss. 879, 84 So. 16 (1920), modified, 123 Miss. 185, 85 So. 87 (1920).

Liability of directors for negligence is tortious, so that they may be sued jointly or severally. Boyd v. Applewhite, 121 Miss. 879, 84 So. 16 (1920), modified, 123 Miss. 185, 85 So. 87 (1920).

Cashier is liable for losses resulting from his tortious acts. Boyd v. Applewhite, 121 Miss. 879, 84 So. 16 (1920), modified, 123 Miss. 185, 85 So. 87 (1920).

3. Actions against directors and officers-parties.

Pledgee of stock may join in suit against directors for negligence. Boyd v. Applewhite, 121 Miss. 879, 84 So. 16 (1920), modified, 123 Miss. 185, 85 So. 87 (1920).

Some of depositors and stockholders may sue directors and officers of bank on behalf of all to recover losses through negligence and mismanagement, where bank is in hands of receiver and he refuses to bring suit. Ellis v. H.P. Gates Mercantile Co., 103 Miss. 560, 60 So. 649, Am. Ann. Cas. 1915B,526 (1913).

Part of depositors may sue directors for deceit in inducing them to make deposits when directors knew bank was insolvent. Brotherhood of Locomotive Firemen v. Hand, 90 Miss. 893, 44 So. 161 (1907).

4. —Pleading.

Declaration in suit against directors of bank to recover deposit on ground of wilful and negligent failure to perform their duties causing insolvency, held demurrable for failure to allege that receiver had been requested to bring suit and had refused. Hardin v. McKnight, 107 Miss. 73, 64 So. 965 (1914).

5. —Limitations.

Suit by minority stockholders for loss from directors' negligence is not governed by the 3-year statute of limitation. Boyd v. Applewhite, 121 Miss. 879, 84 So. 16 (1920), modified, 123 Miss. 185, 85 So. 87 (1920).

RESEARCH REFERENCES

Am Jur. 10 Am. Jur. 2d, Banks and Financial Institutions §§ 329 et seq., 476.

3A Am. Jur. Legal Forms 2d, Banks § 38:63.

CJS. 9 C.J.S., Banks and Banking §§ 97 et seq.

§ 81-5-47. Directors may contract to sell stock while continuing to serve.

Any director of a bank or other banking corporation while serving in such capacity may enter into a contract or option providing for the sale of his or her stock at such time as he or she ceases, by death or otherwise, to be a director thereof.

SOURCES: Codes, 1942, § 5199.5; Laws, 1966, ch. 256, § 1, eff from and after passage (approved May 26, 1966).

Cross References — State-chartered banks having and possessing the rights, powers, privileges, immunities, duties and obligations of a national bank having its principal place of business in this state, irrespective of any conflict with the provisions of this section, see § 81-5-1(9).

§ 81-5-49. Interlocking directorates prohibited.

No person shall be permitted to be a director in more than one bank serving the same incorporated town or city doing business in this state. Any person holding a directorship in violation of this section shall be guilty of a misdemeanor, and upon conviction shall be fined not more than $100.00 and be ineligible to hold a directorship in any state bank within two years therefrom.

This section shall not apply to savings banks and trust companies operated in connection with commercial banks doing business in the same building.

SOURCES: Codes, 1942, § 5200; Laws, 1934, ch. 146.

Cross References — State-chartered banks having and possessing the rights, powers, privileges, immunities, duties and obligations of a national bank having its principal place of business in this state, irrespective of any conflict with the provisions of this section, see § 81-5-1(9).

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

ALR. Prohibition of interlocking directorates between competing corporations under Section 8 of Clayton Act (15 USCS § 19). 60 A.L.R. Fed. 129.

§ 81-5-51. Loans to directors and executive officers.

Loans aggregating fifteen percent (15%) of the unimpaired capital and unimpaired surplus may be made by any state bank to any director or executive officer thereof, as defined in Regulation O promulgated by the Board of Governors of the Federal Reserve System, less existing direct and indirect liabilities thereto, upon affirmative approval of a majority of all directors spread on the minutes of a directors' meeting held before such loan is made, provided, such loan is made on substantially the same terms and conditions extended to other borrowers for comparable transactions. Any state bank may lend to any such director or executive officer thereof, upon affirmative approval of a majority of all directors spread on the minutes of a directors' meeting held before such loan is made, not more than twenty percent (20%) of the unimpaired capital and unimpaired surplus of the bank, less the amount of existing direct and indirect liabilities, when secured; or when the portion thereof in excess of any amount loaned under the first provision hereof is secured by obligations of the United States government, the State of Mississippi, and the levee districts, counties, road districts, school districts, and municipalities of the State of Mississippi, obligations of any other state of the United States and other bonds of recognized character and standing, which are the subject of daily newspaper market quotations, provided such loan shall not exceed eighty percent (80%) of the market or par value (whichever is less) of the bonds or obligations offered as security. Any state bank may lend to any executive officer or director thereof upon affirmative approval of a majority of all directors spread on the minutes of a directors' meeting held before such loan is made, such amount as is safe and proper, when secured by warehouse receipts or shippers' order bills of lading representing actual existing values, provided the amount loaned shall not exceed eighty percent (80%) of the market value of the commodities representing the actual existing values, and loans of this nature shall be made payable on demand so that the security held therefor may be sold on any date and the proceeds thereof applied to the payment of the loan. However, a bank's board of directors may, as shown in its minutes, give to a bank officer the authority to make secured or unsecured loans to an executive officer or director of such bank, without receiving the board's prior approval, in an amount that, when aggregated with the amount of all other extensions of credit to that person and to all related interests of that person, does not exceed the greater of Twenty-five Thousand Dollars ($25,000.00) or five percent (5%) of the bank's unimpaired capital and unimpaired surplus. However, no state bank shall extend credit to any director or executive officer thereof, in an amount that, when aggregated with all other extensions of credit to that person and to all related interests of that person, exceeds Five Hundred Thousand Dollars ($500,000.00) without documented prior affirmative approval of a majority of its directors.

Loans and discounts by a state bank to a director or executive officer thereof secured in full by funds on deposit in time or savings accounts with the lending bank to the credit of the borrower shall not be restricted to the fifteen percent (15%) or twenty percent (20%) limitations herein prescribed.

The limitations of this section shall not apply where an executive officer or director shall bona fide purchase from the bank at a reasonable price real or personal property acquired by the bank in payment of debts due the bank, provided such transactions are approved by a majority of the board of directors, such approval to be shown in their minutes; and, in cases where loans are made by branch banks, the sum total of loans made by any branch or branches and its parent bank to such executive officer or director shall be computed as against the total capital stock and surplus of the parent bank and its branch or branches. Loans heretofore made to executive officers or directors may be renewed or extended if in accord with sound banking practice.

SOURCES: Codes, 1942, § 5201; Laws, 1934, ch. 146; Laws, 1936, ch. 165; Laws, 1966, ch. 249, § 1; Laws, 1983, ch. 342, § 2; Laws, 1988, ch. 543, § 1; Laws, 1995, ch. 308, § 4; Laws, 1996, ch. 400, § 16, eff from and after passage (approved March 19, 1996).

Cross References — State-chartered banks having and possessing the rights, powers, privileges, immunities, duties and obligations of a national bank having its principal place of business in this state, irrespective of any conflict with the provisions of this section, see § 81-5-1(9).

JUDICIAL DECISIONS

1. In general.
2. Legality of loan.
3. —Subsequent approval of loan.
4. Liability, generally.
5. Liability on bond.
6. Actions.

1. In general.

Statute limiting loans by bank to its officers and employees and providing for civil and penal liability of directors, officers, and employees for violation thereof must be strictly construed. Little v. Newhouse, 169 Miss. 154, 152 So. 848 (1934).

2. Legality of loan.

Renewal of original note without lending of new money held not "effecting of loan," within statute prohibiting officers or employees of banking department from effecting loans from state bank. State v. Love, 170 Miss. 666, 150 So. 196, 90 A.L.R. 506 (1933).

Offense of "borrowing money" or "effecting loan" from state bank, within statute prohibiting such loans by officers or employees of banking department, does not continue until loan is paid. State v. Love, 170 Miss. 666, 150 So. 196, 90 A.L.R. 506 (1933).

3. —Subsequent approval of loan.

Subsequent approval by board of directors of loan to president did not cure illegality of loan not approved by board when made, as respects insurer's liability on employee's fidelity bond issued to bank. Fidelity & Deposit Co. v. Merchants' & Marine Bank, 169 Miss. 755, 151 So. 373 (1933), suggestion of error sustained in part, overruled in part, 169 Miss. 755, 154 So. 260 (1933).

4. Liability, generally.

Bank directors who renewed loan were not civilly liable under statute making directors liable for excessive or dishonest "loans." Little v. Newhouse, 169 Miss. 154, 152 So. 848 (1934).

Executive officers of bank are liable to creditor damaged by loan to director, whether excessive or not, without consent of others required by statute. Little v. Newhouse, 164 Miss. 619, 145 So. 608 (1933).

Directors and majority stockholders permitting excessive loans to directors are liable to minority stockholders for loss of their stock. Boyd v. Applewhite, 121 Miss. 879, 84 So. 16 (1920), modified, 123 Miss. 185, 85 So. 87 (1920).

Director sued for loss to stockholders from excessive loans to himself cannot plead that he did not act for the bank. Boyd v. Applewhite, 121 Miss. 879, 84 So. 16 (1920), modified, 123 Miss. 185, 85 So. 87 (1920).

Cashier making excessive and unauthorized loans to a director is liable for resulting losses. Boyd v. Applewhite, 121 Miss. 879, 84 So. 16 (1920), modified, 123 Miss. 185, 85 So. 87 (1920).

5. Liability on bond.

Employees' fidelity bond, which provided for its termination upon discovery by bank of loss, terminated as to president when he loaned money to himself without approval of board of directors, if misappropriation was then known to cashier and vice president, and, if not, bond terminated when board subsequently approved loan. Fidelity & Deposit Co. v. Merchants' & Marine Bank, 169 Miss. 755, 151 So. 373 (1933), suggestion of error sustained in part, overruled in part, 169 Miss. 755, 154 So. 260 (1933).

Employees' fidelity bond, which provided for its termination upon discovery by bank of loss, terminated as to assistant cashier when executive officer of bank acquired knowledge that cashier obtained loan without approval of board of directors, and, if not, bond terminated when board subsequently approved loan. Fidelity & Deposit Co. v. Merchants' & Marine Bank, 169 Miss. 755, 151 So. 373 (1933), suggestion of error sustained in part, overruled in part, 169 Miss. 755, 154 So. 260 (1933).

Loan by bank president to golf course partnership composed of his wife and others but in which he had no interest, though not approved by board of directors of bank, held not covered by bankers' blanket bond. Fidelity & Deposit Co. v. Merchants' & Marine Bank, 169 Miss. 755, 151 So. 373 (1933), suggestion of error sustained in part, overruled in part, 169 Miss. 755, 154 So. 260 (1933).

Bank had burden of proving that loan by its president to himself without approval of board of directors was made subsequent to time when bankers' blanket bond became effective. Fidelity & Deposit Co. v. Merchants' & Marine Bank, 169 Miss. 755, 151 So. 373 (1933), suggestion of error sustained in part, overruled in part, 169 Miss. 755, 154 So. 260 (1933).

Absent evidence as to what hour of day president made loan to himself without approval of board of directors of bank, surety held not liable therefor on bankers' blanket bond which became effective at noon on same day. Fidelity & Deposit Co. v. Merchants' & Marine Bank, 169 Miss. 755, 151 So. 373 (1933), suggestion of error sustained in part, overruled in part, 169 Miss. 755, 154 So. 260 (1933).

Loans by bank president to his partners for use in fishing partnership, not approved by board of directors of bank and evidenced by notes which were not signed by president as maker, held covered by employees' fidelity bond insuring bank against pecuniary loss through fraud or dishonesty of its employees directly or in connivance with others. Fidelity & Deposit Co. v. Merchants' & Marine Bank, 169 Miss. 755, 151 So. 373 (1933), suggestion of error sustained in part, overruled in part, 169 Miss. 755, 154 So. 260 (1933).

Loan by bank president to corporation wherein he was one of its three stockholders who determined to apply therefor, subsequently approved by board of directors of bank, held not covered by employees' fidelity bond insuring bank against pecuniary loss through fraud or dishonesty of its employees directly or in connivance with others. Fidelity & Deposit Co. v. Merchants' & Marine Bank, 169 Miss. 755, 151 So. 373 (1933), suggestion of error sustained in part, overruled in part, 169 Miss. 755, 154 So. 260 (1933).

Act of bank president in discounting notes owned by corporation wherein he was one of its three stockholders who determined to sell notes to bank whose board of directors subsequently approved such act held not covered by employees' fidelity bond insuring bank against pecuniary loss through fraud or dishonesty of its employees directly or in connivance with others. Fidelity & Deposit Co. v. Merchants' & Marine Bank, 169 Miss. 755, 151 So. 373 (1933), suggestion of error sustained in part, overruled in part, 169 Miss. 755, 154 So. 260 (1933).

6. Actions.

Complaint seeking to enforce bank directors' liability held insufficient because not alleging facts showing where in loan to director was excessive or dishonestly made and names of directors knowingly permitting or making loan. Little v. Newhouse, 164 Miss. 619, 145 So. 608 (1933).

Heirs should not be joined in action to enforce liability of deceased bank director, unless estate in executor's hands is insufficient, and heirs have participated in distribution thereof. Little v. Newhouse, 164 Miss. 619, 145 So. 608 (1933).

Complaint that notes representing loans in excess of one-fifth of bank's capital made to director after his resignation, were either signed or delivered while he was director held not sufficient to show liability under Code 1906, § 922. Bramlette v. Joseph, 111 Miss. 379, 71 So. 643 (1916).

RESEARCH REFERENCES

ALR. Construction and application of statutes prohibiting or limiting loans to bank's officers or directors. 49 A.L.R.3d 727.

Am Jur. 10 Am. Jur. 2d, Banks and Financial Institutions §§ 450 et seq.

CJS. 9 C.J.S., Banks and Banking § 499.

§ 81-5-53. Limitation of liability when dealing with agents, trustees, etc.

A bank dealing, whether to its own benefit or otherwise, with, through or under any person, who is or may be an agent, trustee, guardian, executor, administrator, or other fiduciary, or a corporate officer, agent or employee, or a partnership member or representative, shall not be deemed to have notice of or be obligated to inquire as to any lack of or limitation upon the power of such person by reason in and of itself, either of the fact that such person has executed in his representative capacity and is himself the payee or indorsee of any check, bill, note or other promise or order, or of the use of descriptive words in connection with his deposit account or accounts, or in connection with any transfer, certificate or memorandum thereof, or in connection with any signature or indorsement of such person.

SOURCES: Codes, 1942, § 5202; Laws, 1934, ch. 146.

Cross References — Commercial paper under the Uniform Commercial Code, see §§ 75-3-101 et seq.

Bank deposits and collections under the Uniform Commercial Code, see §§ 75-4-101 et seq.

State-chartered banks having and possessing the rights, powers, privileges, immunities, duties and obligations of a national bank having its principal place of business in this state, irrespective of any conflict with the provisions of this section, see § 81-5-1(9).

Continuation of business by executor or administrator, see § 91-7-173.

Delivery of property of ward to guardian, see § 93-13-31.

Dealings in real estate by guardian, see § 93-13-41.

JUDICIAL DECISIONS

1. In general.
2. Particular checks and deposits.

1. In general.

Bank is protected in dealings with fiduciaries unless bank has actual knowledge that fiduciary is improperly exercising or exceeding its authority; constructive knowledge or notice is insufficient. Collier v. Trustmark Nat'l Bank, 678 So. 2d 693 (Miss. 1996).

This section [Code 1942, § 5202], providing that bank need not inquire as to lack of or limitation on power of agent, executing check payable or indorsed to him or using descriptive words in connection with signature or indorsement thereon, is not inapplicable to principal's signature forged by agent. Hart v. Moore, 171 Miss. 838, 158 So. 490 (1935).

2. Particular checks and deposits.

Where check payable to attorney but showing on its face that another was real party for whom it was received, was indorsed by attorney in blank and delivered to local bank for collection, which in turn indorsed it generally and delivered it to collecting bank, such collecting bank was holder in due course for value without notice; fact that it was payable to attorney carrying no notice. First Nat'l Bank v. Bianca, 171 Miss. 866, 158 So. 478 (1935).

Chancery court's order, directing executrix to place money, held by her in trust for minor legatees, on time deposit in bank, which subsequently failed, and prohibiting it from permitting withdrawal thereof without court order, did not make bank coexecutor and trustee for minors, who were not entitled to preference over bank's general creditors. Deposit Guar. Bank & Trust Co. v. Merchants' Bank & Trust Co, 171 Miss. 553, 158 So. 136 (1934).

Where depositor placed word "agent" after name, presumption was that money deposited was her money, and that fact did not authorize the bank to dishonor her check because garnishment writ had been served on bank by judgment creditor of depositor's husband. Pascagoula Nat'l Bank v. Eberlein, 161 Miss. 337, 131 So. 812 (1931).

Where a commissioner sold land under court order, and a check for the purchase price was given to him as such commissioner, bank with knowledge of fiduciary character of funds represented by such check was liable to beneficiaries of the trust for diversion where it credited the funds to commissioner's individual account. Bank of Hickory v. McPherson, 102 Miss. 852, 59 So. 934 (1912) but see Collier v. Trustmark Nat'l Bank, 678 So. 2d 693 (Miss. 1996).

RESEARCH REFERENCES

ALR. Duties of collecting bank with respect to presenting draft or bill of exchange for acceptance. 39 A.L.R.2d 1296.

Bank's right to apply third person's funds, deposited in debtor's name, on debtor's obligation. 8 A.L.R.3d 235.

Duty of pledgee of commercial paper as to its enforcement or collection. 45 A.L.R.3d 248.

Am Jur. 10 Am. Jur. 2d, Banks and Financial Institutions §§ 818 et seq.

§ 81-5-55. Name of depositors not to be disclosed.

In no instance shall the name of any depositor, or the amount of his deposit, be disclosed to anyone, except to report to approved parties, such as credit bureaus, account verification services and others, the forcible closure of a deposit account due to misuse, such as fraud, kiting or chronic bad check writing or when required to be done in legal proceedings, for verification of public assistance in cases in which the Department of Human Services or the Division of Medicaid certifies that it has on file an effective written authorization from the depositor authorizing the disclosure of that information, for verification of the financial exploitation of a vulnerable person in cases in which the Attorney General submits a written authorization, or in case of insolvency of banks. The parties referred to in this section must be approved by the Commissioner of Banking and Consumer Finance and must satisfactorily demonstrate their reliability and credibility of their activities. Disclosure of depositor information to any affiliate or agent providing services on behalf of the bank shall not be considered disclosure of depositor information within the meaning of this section. The term "affiliate" means a corporation or business entity that controls, is controlled by or is under common control with the bank. The term "agent" means anyone who has an agreement, arrangement or understanding to transact business for the bank by the authority and on account of the bank, provided that the agreement binds the agent to the same degree of confidentiality of disclosure of bank records as the bank. Any violation of this provision shall be considered a misdemeanor and, upon conviction thereof, in any court of competent jurisdiction, the person shall be punished by a fine of not more than One Thousand Dollars ($1,000.00) or imprisoned in the county jail not more than six (6) months or both, and in addition thereto, shall be liable upon his bond to any person damaged thereby.

This section shall not be construed to prohibit the disclosure to the State Treasurer, State Auditor, Legislative Budget Office, Joint Legislative Committee on Performance Evaluation and Expenditure Review or the Department of Finance and Administration, of any information about any type of account or investment, including certificates of deposit, owned by any public entity of the State of Mississippi. In addition, this section shall not be construed to prohibit, or to impose liability for, the disclosure of information to the Department of Human Services, the Child Support Unit of the Department of Human Services, the Division of Medicaid, or their contractors or agents, pursuant to Chapter 13 or Chapter 19 of Title 43, Mississippi Code of 1972.

SOURCES: Codes, 1942, § 5279; Laws, 1934, ch. 146; Laws, 1984, ch. 327; Laws, 1985, ch. 525, § 32; Laws, 1987, ch. 326, § 2; Laws, 1997, ch. 542, § 4; Laws, 1997, ch. 588, § 146; Laws, 2001, ch. 603, § 13, Laws 2012, ch. 434, § 2, eff from and after July 1, 2012.

Joint Legislative Committee Note — Section 4 of ch. 542, Laws of 1997, amended this section, effective from and after passage (April 10, 1997). Section 146 of ch. 588, Laws of 1997, effective July 1, 1997, also amended this section. As set out above, this section reflects the language of Section 146 of ch. 588, Laws of 1997, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, the amendment with the latest effective date shall supersede all other amendments to the same section taking effect earlier.

Editor's Note — Section 7-7-2, as added by Laws of 1984, chapter 488, § 90, and amended by Laws of 1985, chapter 455, § 14, Laws of 1986, chapter 499, § 1, provided, at subsection (2) therein, that the words "state auditor of public accounts," "state auditor", and "auditor" appearing in the laws of the state in connection with the performance of auditor's functions transferred to the state fiscal management board, shall be the state fiscal management board, and, more particularly, such words or terms shall mean the state fiscal management board whenever they appear. Thereafter, Laws of 1989, chapter 532, § 2, amended § 7-7-2 to provide that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer, and, more particularly, such words or terms shall mean the State Fiscal Officer whenever they appear. Subsequently, Laws of 1989, ch. 544, § 17, effective July 1, 1989, and codified as § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Cross References — Joint Legislative Committee on Performance Evaluation and Expenditure Review, see §§ 5-3-51 et seq.

State Treasurer, see §§ 7-9-1 et seq.

Bank expenses for disclosure of customer's financial records, see § 13-1-245.

Legislative Budget Office, see §§ 27-103-101 et seq.

State-chartered banks having and possessing the rights, powers, privileges, immunities, duties and obligations of a national bank having its principal place of business in this state, irrespective of any conflict with the provisions of this section, see § 81-5-1(9).

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

ALR. Search and seizure of bank records pertaining to customer as violation of customer's rights under state law. 33 A.L.R.5th 453.

Criminal liability for failure to report export or import of monetary instrument as required by provision of Currency and Foreign Transactions Reporting Act (31 USCS § 1101). 59 A.L.R. Fed. 438.

§ 81-5-56. Month and year checking account opened to be printed on face of checks.

From and after July 1, 1991, any financial institution offering checking accounts which accepts a new checking account shall require that there be printed on the face of each check for such new account the month and year in which the holder of the checking account first opened such account. Any account five (5) years of age or older may show an opening date of January 1986 if the date of actual opening is unavailable. The provisions of this section shall also apply to any additional checks ordered after July 1, 1991, for checking accounts which were in existence on March 15, 1991.

SOURCES: Laws, 1991, ch. 399 § 1, eff from and after passage (approved March 15, 1991).

RESEARCH REFERENCES

Am Jur. 10 Am. Jur. 2d, Banks and Financial Institutions §§ 868 et seq.

CJS. 9 C.J.S., Banks and Banking §§ 332, 340-344, 360, 364-366.

§ 81-5-57. Excess deposits; limit and penalty.

No state bank shall receive and hold deposits continuously for more than twelve months in excess of twenty times its paid up capital, surplus, undivided profits and reserves, except by permission of the state comptroller. Such permission of the state comptroller shall be in writing executed in duplicate, and one copy thereof shall be delivered to and held by the bank and the other shall be kept on file in the office of the state comptroller. Any bank violating the provisions of this section shall be liable for $100.00 penalty for each day in which deposits are held contrary to the provisions hereof, payable upon demand by the state comptroller who shall bring suit therefor if not paid within ten days after demand. All penalties collected under this section shall be paid into the department of bank supervision maintenance fund.

SOURCES: Codes, 1942, § 5203; Laws, 1934, ch. 146; Laws, 1940, ch. 203; Laws, 1942, ch. 263; Laws, 1944, ch. 255, § 1.

Editor's Note — Section 81-1-57 provides that wherever the words "state comptroller" or "comptroller", when referring to the office of state comptroller of banks, shall be construed to mean the commissioner of banking and consumer finance.

Section 81-1-117 abolished the office of state comptroller, and provided that the functions, duties and responsibilities would be assumed by the commissioner of banking and consumer finance.

Cross References — State-chartered banks having and possessing the rights, powers, privileges, immunities, duties and obligations of a national bank having its principal place of business in this state, irrespective of any conflict with the provisions of this section, see § 81-5-1(9).

RESEARCH REFERENCES

Am Jur. 10 Am. Jur. 2d, Banks and Financial Institutions §§ 697, 700, 712.

§ 81-5-59. Deposit of minors.

When any minor or other person under disability shall make a deposit in any bank in his or her name such bank may pay such money on a check or order of such person, the same as in other cases, and such payment shall be in all respects valid in law.

SOURCES: Codes, 1942, § 5204; Laws, 1934, ch. 146.

Cross References — Death or incompetence of bank customer under the Uniform Commercial Code, see § 75-4-405.

State-chartered banks having and possessing the rights, powers, privileges, immunities, duties and obligations of a national bank having its principal place of business in this state, irrespective of any conflict with the provisions of this section, see § 81-5-1(9).

Leasing of safe deposit boxes to minors, see § 81-5-61.

Minor's accounts in savings associations, see § 81-12-135.

Deposits of minors in credit unions, see § 81-13-37.

§ 81-5-61. Safe deposit boxes; leasing to minors.

Any bank or other corporation maintaining safe deposit boxes for lease to the public may lease one or more of such boxes to a minor eighteen (18) years of age or older and in connection therewith deal with such minor with the same effect as if leasing to and dealing with a person of full capacity.

SOURCES: Codes, 1942, § 5204.5; Laws, 1966, ch. 255, § 1, eff from and after passage (approved May 6, 1966).

Cross References — Definition of term "minor," see § 1-3-27.

State-chartered banks having and possessing the rights, powers, privileges, immunities, duties and obligations of a national bank having its principal place of business in this state, irrespective of any conflict with the provisions of this section, see § 81-5-1(9).

§ 81-5-62. Accounts payable at death.

Accounts payable at death may be established under the following conditions:

(a) An account in a bank, including a national bank, may be opened by any person or persons with directions to make such an account payable on the death of the person or persons opening such an account to the named beneficiary or beneficiaries. When an account is so opened, the bank shall pay any monies to the credit of the account from time to time to, or pursuant to the order of, the person or persons opening such an account during his or their lifetime in the same manner as if the account were in the sole name or names of such person or persons. The term "accounts" or "account" as used in this section shall include, but not be limited to, any form of deposit or account, such as a savings account, checking account, time deposit, demand deposit or certificate of deposit, whether negotiable, non-negotiable or otherwise.

(b) If the named beneficiary or one (1) of the beneficiaries so named is an individual beneficiary and the individual beneficiary or beneficiaries survive the death of the person opening such an account, and the individual beneficiary or all of the individual beneficiaries so named are sixteen (16) years of age or over at the death of the person opening such an account, the bank shall pay the monies to the credit of the account, less all setoffs and charges, to the named individual beneficiary or beneficiaries or upon his or their order, as hereinafter provided, and such payment by the bank shall be valid, notwithstanding any lack of legal age of the named beneficiary or beneficiaries; provided, however, where such an account is opened or subsequently held by more than one (1) person, the death of one (1) of such persons shall not terminate the account and the account shall continue as to the surviving person or persons and the named beneficiary or beneficiaries subject to the provisions of paragraphs (c) through (j) of this section. For purposes of this section, the term "individual beneficiary" shall refer to a living person who is the named beneficiary of a payable on death account.

(c) If the named individual beneficiary or all of the individual beneficiaries so named survive the death of the person or persons opening such an account and are under sixteen (16) years of age at such time, the bank shall pay the monies to the credit of the account, less all setoffs and charges:

(i) When or after the named individual beneficiary becomes sixteen (16) years of age, to the named beneficiary or upon his order; or

(ii) When more than one (1) individual beneficiary is named, the bank shall pay to each individual beneficiary so named his proportionate interest in such account as each severally becomes sixteen (16) years of age; or

(iii) To the legal guardian of the named individual beneficiary, wherever appointed and qualified, or where more than one (1) beneficiary is named, the bank shall pay such individual beneficiary's proportionate interest in such account to his legal guardian wherever and whenever appointed and qualified; or

(iv) In the event no guardian is appointed and qualified, payment may be made in accordance with the provisions of Section 93-13-211 et seq., in situations to which such section or sections are applicable.

(d) Where the death of the person or persons opening such an account terminates the account under the provisions of paragraphs (b) and (c) of this section, and where one or more of the named individual beneficiaries are under sixteen (16) years of age and the remainder of the named individual beneficiaries are sixteen (16) years of age or over, the bank shall pay the monies, less all setoffs and charges, to:

(i) The named individual beneficiaries sixteen (16) years of age or over at the time of termination of such account pursuant to paragraph (b) of this section; and

(ii) The named individual beneficiaries under sixteen (16) years of age at the time of termination of such account pursuant to paragraph (c) of this section.

(e) If the named beneficiary or one (1) of the beneficiaries so named is a revocable trust, evidenced by a written trust agreement, which trust is still in existence at the death of the person opening such an account, the bank shall pay the monies to the credit of the account, less all setoffs and charges, to the trustee of the named revocable trust or upon his or their order, as hereinafter provided, upon being presented an affidavit by the trustee stating that the name of the trust, the names of the current trustees, and that the trust is still in existence at the time of presentment of the affidavit. Such payment by the bank shall be valid, notwithstanding any lack of actual authority by the trustee, and the bank shall be discharged and released to the same extent as if the bank had dealt with the personal representative of the decedent. Such bank shall not be required to see to the proper application of the monies or evidence thereof or to inquire into the truth of any statement presented in the affidavit by the trustee.

(f) Where such account is opened or subsequently held by more than one (1) person, the bank, in the absence of any written instructions to the contrary which are consented to by the bank, shall accept payments made to such account and may pay any monies to the credit of such account from time to time to, or pursuant to the order of, either or any of such persons during their life or lives in the same manner as if the account were in the sole name of either or any of such persons.

(g) When a person or persons open an account in a bank in the form set forth in paragraph (a) of this section, and makes a payment or payments to such account or causes a payment or payments to be made to such account, it shall be conclusively presumed that such person or persons intend to vest in the named beneficiary or beneficiaries a present beneficial interest in such payment so made and in the monies to the credit of the account from time to time, to the end that, if the named beneficiary or beneficiaries survive the person or persons opening such an account, all the right and title of the person or persons opening such an account in and to the monies to the credit of the account at the death of such person or persons, less all setoffs and charges, shall, at such death, vest solely and indefeasibly in the named beneficiary or beneficiaries subject to the conditions and limitations of paragraphs (b) through (j) of this section.

(h) If the named individual beneficiary predeceases the person opening such an account, or if the named beneficiary is a revocable trust that is terminated, the present beneficial interest presumed to be vested in the named beneficiary pursuant to paragraph (g) of this section shall terminate at the death of the named individual beneficiary or upon the termination of the revocable trust named as a beneficiary. In such case, the personal representatives of the named individual beneficiary, the beneficiaries of the revocable trust, and all others claiming through or under the named beneficiary, shall have no right in or title to the monies to the credit of the account, and the bank shall pay such monies, less all setoffs and charges, to the person opening such an account or pursuant to his order in the same manner as if the account were in the sole name of the person opening such an account; provided, however, where such an account names more than one (1) beneficiary, the death of one (1) of the individual beneficiaries or the termination of a revocable trust beneficiary so named shall not terminate the account and the account shall continue as to the surviving beneficiary or beneficiaries subject to the provisions of paragraphs (b) through (j) of this section.

(i) A bank which makes any payment pursuant to paragraphs (b) through (h) of this section, prior to service upon the bank of an order of court restraining such payment, shall, to the extent of each payment so made, be released from all claims of the person or persons opening such an account, the named beneficiary or beneficiaries, their legal representatives, and all others claiming through or under them.

(j) When an account is opened in a form described in paragraph (a) of this section, the right of the named beneficiary or beneficiaries to be vested with sole and indefeasible title to the monies to the credit of the account on the death of the person or persons opening such an account shall not be denied, abridged or in anyway affected because such right has not been created by a writing executed in accordance with the law of this state prescribing the requirements to effect a valid testamentary disposition of property.

SOURCES: Laws, 1984, ch. 326, § 2; Laws, 1988, ch. 484, § 2; Laws, 2008, ch. 327, § 1, eff from and after July 1, 2008.

Cross References — State-chartered banks having and possessing the rights, powers, privileges, immunities, duties and obligations of a national bank having its principal place of business in this state, irrespective of any conflict with the provisions of this section, see § 81-5-1(9).

§ 81-5-63. Deposit in name of two or more persons; payments to successors of deceased depositors without administration; "successor" defined.

(1) When a deposit has been made or is hereafter made in the name of two (2) or more persons, payable to any one (1) of those persons, or payable to any one (1) of those persons or the survivor, or payable to any one (1) of those persons or to the survivor or survivors, or payable to the persons as joint tenants, the deposit or any part thereof or interest or dividends thereon may be paid to any one (1) of those persons, without liability whether one or more of those persons is living or not, and the receipt of acquittance of the person so paid shall be a valid and sufficient release and discharge to the bank for any payment so made. The making of a deposit in that form, or the making of additions thereto, shall create a presumption in any action or proceeding to which either the bank or any survivor is a party of the intention of all the persons named on the deposit to vest title to the deposit and the additions thereto and all interest or dividends thereon in the survivor or survivors.

(2)(a) Any bank may pay to the successor of a deceased depositor, without necessity of administration, any sum to the credit of the decedent not exceeding Twelve Thousand Five Hundred Dollars ($12,500.00), without liability to any other persons, relatives or beneficiaries, and the receipt of acquittance of the person so paid shall be a valid and sufficient release and discharge to the bank for any payment so made. This section shall apply to all banking institutions, including national banks and postal savings banks within the state. The term "deposit" as used in this section shall include, but not be limited to, any form of deposit or account, such as a savings account, checking account, time deposit, demand deposit or certificate of deposit, whether negotiable, nonnegotiable or otherwise.

(b) For the purposes of this subsection, "successor" means the decedent's spouse; or, if there is no surviving spouse of the decedent, then the adult with whom any minor children of the decedent are residing; or, if there is no surviving spouse or minor children of the decedent, then any adult child of the decedent; or, if there is no surviving spouse or children of the decedent, then either parent of the decedent; or, if there is no surviving spouse, children or parent of the decedent, then any adult sibling of the decedent.

SOURCES: Codes, 1942, § 5205; Laws, 1934, ch. 146; Laws, 1950, ch. 201; Laws, 1966, ch. 250; Laws, 1966, ch. 316, § 10-105; Laws, 1968, ch. 251, § 1; Laws, 1980, ch. 426, § 1; Laws, 1988, ch. 484, § 3; Laws, 1995, ch. 380, § 1; Laws, 2001, ch. 458, § 1; Laws, 2009, ch. 419, § 1, eff from and after passage (approved Mar. 23, 2009.)

Cross References — Death or incompetence of bank customer under the Uniform Commercial Code, see § 75-4-405.

State-chartered banks having and possessing the rights, powers, privileges, immunities, duties and obligations of a national bank having its principal place of business in this state, irrespective of any conflict with the provisions of this section, see § 81-5-1(9).

Deposits in savings associations in the name of two or more persons, see § 81-12-137.

Payment of indebtedness or delivery of personal property of decedent to decedent's successor, see § 91-7-322.

Payment of indebtedness or delivery of personal property of decedent to decedent's successor, see § 91-7-322.

JUDICIAL DECISIONS

1. In general.
2. Applicability.
3. Joint ownership of account.
4. —Presumption.
5. —Rebuttal of presumption.
6. —Survivorship rights.
7. Garnishment.
8. Setoff.

1. In general.

A testator cannot, by will, dispose of property which he or she placed, during his or her lifetime, in a validly created joint tenancy account with rights of survivorship. A subsequent will does not destroy the joint tenancy and does not terminate that tenancy and divest the corpus of it into the estate of the testator. Strange v. Strange, 548 So. 2d 1323 (Miss. 1989).

This section [Code 1942, § 5205] does not limit right to create joint tenancy, with right of survivorship in personal property. Stewart v. Barksdale, 216 Miss. 760, 63 So. 2d 108 (1953).

2. Applicability.

This section [Code 1942, § 5205] was inapplicable where a note was made payable to a husband and his wife, or the survivor of them. Vaughn v. Vaughn, 238 Miss. 342, 118 So. 2d 620 (1960).

3. Joint ownership of account.

When three individuals jointly owned four certificates of deposit (CDs), and the word "or" was listed in between the owners' names on the CDs, any one of the owners were entitled to treat the CDs as their own, pursuant to Miss. Code Ann. § 81-5-63(1), and each had an equal right to withdraw the CDs; thus, the bank holding the CDs was not allowed to favor one owner over another. Epperson v. SOUTHBank, — So. 3d —, 2011 Miss. App. LEXIS 350 (Miss. Ct. App. June 14, 2011), reversed by 93 So. 3d 10, 2012 Miss. LEXIS 248 (Miss. 2012).

In a case where a certificate of deposit (CD) was jointly owned, a bank was properly found not liable when one owner unilaterally withdrew the funds for placement into another CD; either of the co-owners were able to withdraw the funds. DeJean v. DeJean, 982 So. 2d 443 (Miss. Ct. App. 2007), writ of certiorari denied by 981 So. 2d 298, 2008 Miss. LEXIS 236 (Miss. 2008).

Trustee was granted summary judgment against the debtors' children for the value of the proceeds from certificates of deposit (CDs), pursuant to 11 U.S.C. § 550(a)(1), and avoided, pursuant to 11 U.S.C. § 548(a)(1)(B), the debtor wife's transfers of the proceeds into bank accounts for the children because the CDs vested in the debtor, the designated payable on death beneficiary, when the owner died and the transfers were made within one year of the bankruptcy filing, were made while the debtors were insolvent, and were made for no consideration or less than reasonably equivalent value. Applewhite v. Akin (In re Akin), 366 B.R. 619 (Bankr. N.D. Miss. 2007).

Where a confidential relationship existed, the law governing inter vivos gifts, rather than testamentary dispositions, applied in determining the validity of the establishment of joint accounts, even though the beneficiary did not exercise control over the assets in the accounts until after the depositor's death, and therefore proof of mental incompetence or an abuse of the confidential relationship was not required to raise a rebuttable presumption of undue influence accompanying the establishment of the joint accounts; thus, the beneficiary of the establishment of the joint accounts had the burden of proving, by clear and convincing evidence, the absence of undue influence. Madden v. Rhodes, 626 So. 2d 608 (Miss. 1993).

A person may make a gift in joint tenure by making a deposit of the subject of the gift in a bank in such a manner that it will stand to the credit of the donor and the donee as joint owners. Leverette v. Ainsworth, 199 Miss. 652, 23 So. 2d 798 (1945).

Precise form is not essential to create a joint bank account with right of survivorship when formal deficiencies are supplied by definite proof. Leverette v. Ainsworth, 199 Miss. 652, 23 So. 2d 798 (1945).

To create a joint bank deposit or account with right of survivorship, it must be either in the form of a deposit to the credit of depositor or another named person, or in similarity thereto, or else the intention to create a joint account for deposit must be well proved aliunde. Leverette v. Ainsworth, 199 Miss. 652, 23 So. 2d 798 (1945).

Mere fact that bank account is made subject to the checks of two or more persons does not in itself constitute evidence of joint ownership. Leverette v. Ainsworth, 199 Miss. 652, 23 So. 2d 798 (1945).

Deposit in bank to the credit of depositor or another named person raises a presumption under this section that the deposit was intended to be in joint ownership, and subject to withdrawal by either of the joint owners. Leverette v. Ainsworth, 199 Miss. 652, 23 So. 2d 798 (1945).

Where proven facts sufficiently disclose a clear intention to create a right which embraces the essential elements of joint ownership and survivorship in respect to a particular bank deposit or account, the intention so proved will be given effect and the survivor will be held entitled to the fund. Leverette v. Ainsworth, 199 Miss. 652, 23 So. 2d 798 (1945).

Transaction whereby depositor made a bank deposit to the credit of his mother but subject to check by the depositor at any time, did not create a joint account or deposit with right of survivorship in the absence of proof that the depositor clearly intended to create such an account, so that upon the depositor's death the deposit belonged to his estate. Leverette v. Ainsworth, 199 Miss. 652, 23 So. 2d 798 (1945).

4. —Presumption.

Section 81-5-63 and § 81-12-137, which deal, respectively, with joint deposits in a bank checking account and in a savings account in a savings association, create a presumption of joint tenancy ownership with the right of survivorship. On the other hand, such presumption does not apply to bank issued certificates of deposit held in the names of 2 or more persons, in the absence of express intent on the certificate to create such joint tenancy. Delta Fertilizer, Inc. v. Weaver, 547 So. 2d 800 (Miss. 1989).

A presumption arises that a bank account either in the name of "Mr. or Mrs. J. H. Barrow" or in the name of "Mr. or Mrs. J. H. Barrow, payable to the order of either or survivor" created joint ownership with the right of survivorship. Shearin v. Coleman, 201 Miss. 193, 28 So. 2d 841 (1947).

Where deposit is made in name of two persons, payable to either, statutory presumption, in absence of evidence to the contrary, is sufficient to establish right to deposit in the survivor. In re Lewis' Estate, 194 Miss. 480, 13 So. 2d 20 (1943).

5. —Rebuttal of presumption.

In an action by an administrator with will annexed against the daughter of the decedent to recover money in a joint bank account of the decedent and the daughter upon the grounds that the decedent was induced to create the joint account by undue influence and fraud practiced upon him by the daughter, and that the decedent did not have the mental capacity to create the account, the evidence sustained the chancellor's findings contrary to the administrator's contentions. Edwards v. Jefcoat, 230 Miss. 56, 92 So. 2d 342 (1957).

The presumption created by this statute was not overcome by evidence that one of two persons in whose names certificates of deposit were issued in the alternative bequeathed a considerable cash legacy to another. Shearin v. Coleman, 201 Miss. 193, 28 So. 2d 841 (1947).

6. —Survivorship rights.

The joint owner of three certificates of deposit was entitled to them by right of survivorship where the decedent's attorney in fact under a power of attorney placed the joint owner's name on the certificates of deposit, the attorney in fact and the joint owner never shared a confidential relationship while the attorney in fact acted for the decedent, there was no evidence that the attorney in fact acted in bad faith, and the joint owner and the decedent did not share a confidential relationship until after the joint owner's name was placed on the certificates of deposit. In re Dunn v. Reilly, 784 So. 2d 935 (Miss. 2001).

The 1988 amendment to this section, which created a conclusive presumption of survivorship, applied to certificates of deposit procured in 1986 and renewed in 1992. McNeil v. Hester, 753 So. 2d 1057 (Miss. 2000).

Certificates of deposit issued to the decedent and her son as joint tenants and a personal checking account registered jointly in her name and her son's name did not pass under the decedent's will, but passed pursuant to the banking documents, notwithstanding a prior will which instructed that her estate be shared by her children equally. Horn v. Horn (Estate of Huddleston), 755 So. 2d 435 (Miss. Ct. App. 1999).

Joint bank account in Mississippi was not product of the depositor's business colleague's undue influence, so as to overcome presumption that funds belonged to colleague, as survivor; although depositor and colleague had close relationship, colleague was not in position to exercise dominant influence over depositor when account was opened, and there was no showing that colleague did not act in good faith or that depositor did not act independently in his actions. Cantrell v. Pat O'Brien's Bar, Inc., 705 So. 2d 1205 (La. App. 4th Cir. 1998).

A certificate of deposit payable to the decedent and her heir, which was renewed by the decedent in 1981, created a right of survivorship in the heir. Stamper v. Edwards, 607 So. 2d 1141 (Miss. 1992).

Funds represented by a 1981 certificate of deposit made "payable on death" to the decedent's heir did not constitute any part of the decedent's estate, but rather, by reason of § 81-5-63, the funds became vested in the heir upon the decedent's death. Stamper v. Edwards, 607 So. 2d 1141 (Miss. 1992).

In a proceeding to determine the husband's right to renounce his wife's will, where a certificate of deposit in the bank was payable to the wife or the wife's brother, upon the death of the wife, this deposit became the property of the brother, and was no portion of the wife's estate. Myers v. Laird, 230 Miss. 675, 93 So. 2d 828 (1957).

7. Garnishment.

A joint account should be garnishable only in proportion to the debtor's ownership of the funds, as to which evidence is admissible to show what portion of the funds is actually owned by each depositor. Delta Fertilizer, Inc. v. Weaver, 547 So. 2d 800 (Miss. 1989).

8. Setoff.

Deposits in a savings account in the name of a customer or her nephew, who was the executor of her estate, were presumptively intended to be in joint ownership and subject to withdrawal by either of the joint owners pursuant to § 81-5-63, and therefore the bank had a right to set off the balance in the account against the nephew's debt to the bank where the nephew did not give notice to the bank that the funds were an asset of the estate of his deceased aunt rather than his alone as survivor, and some of the nephew's dealings with the account prior to and after his aunt's death concerned his individual interests unrelated in any way to his aunt. Graham v. Bank of Leakesville, 556 So. 2d 1079 (Miss. 1990).

RESEARCH REFERENCES

ALR. Conflict of laws as to disposition of and relative rights to bank deposits in the names of more than one person. 25 A.L.R.2d 1240.

Parol evidence rule as applied to deposit of funds in name of depositor and another. 33 A.L.R.2d 569.

Imposition or declaration of constructive or resulting trust in United States savings bonds. 51 A.L.R.2d 163.

Effect of incompetency of joint depositor upon status and ownership of bank account. 62 A.L.R.2d 1091.

Appealability of order setting aside, or refusing to set aside, default judgment. 8 A.L.R.3d 1272.

Joint bank account as subject to attachment, garnishment, or execution by creditor of one of the joint parties. 11 A.L.R.3d 1465.

Creation of joint savings account or savings certificate as gift to survivor. 43 A.L.R.3d 971.

Bank's right of setoff, based on debt of one depositor, against funds in account standing in names of debtor and another. 68 A.L.R.3d 192.

Liability of bank to joint depositor of savings account for amounts withdrawn by other joint depositor without presentation of passbook. 35 A.L.R.4th 1094.

Liability of bank to joint depositor for removal of name from account at request of other joint depositor. 39 A.L.R.4th 1112.

Nondrawing cosignor's liability for joint checking account overdraft. 48 A.L.R.4th 1136.

Payable-on-death savings account or certificate of deposit as will. 50 A.L.R.4th 272.

Am Jur. 10 Am. Jur. 2d, Banks and Financial Institutions §§ 604 et seq.

4 Am. Jur. Pl & Pr Forms (Rev), Banks, Forms 84, 114.

3A Am. Jur. Legal Forms 2d, Banks § 38:150 (deposit agreement-joint account payable to either joint tenant or survivor).

3B Am. Jur. Legal Forms 2d, Banks §§ 38:149, 38:150.

7 Am. Jur. Proof of Facts 2d 311, Ownership of Bank Deposit Made in the Names of Two or More Persons.

CJS. 9 C.J.S., Banks and Banking §§ 291, 292, 294, 295, 355.

Law Reviews. 1978 Mississippi Supreme Court Review: Commercial Law. 50 Miss. L. J. 41, March, 1979.

§ 81-5-65. Accounts of deceased depositors to be reported; publicity of same.

It shall be the duty of every officer and employee of the department of bank supervision to report to the state comptroller the name of every person not known to be living who appears by the records of the bank to have a sum of money on deposit; provided this section shall only apply to deposits made five years or more prior to such report which have not been added to by further deposits or reduced by withdrawal. The state comptroller shall give publicity to any such fact in such manner as he may prescribe.

SOURCES: Codes, 1942, § 5206; Laws, 1934, ch. 146.

Editor's Note — Section 81-1-57 provides that wherever the words "Department of Bank Supervision" or "department," when referring to the Department of Bank Supervision, shall be construed to mean the Department of Banking and Consumer Finance.

Section 81-1-57 provides that wherever the words "state comptroller" or "comptroller,"when referring to the office of state comptroller of banks, shall be construed to mean the commissioner of banking and consumer finance.

Section 81-1-117 abolished the Department of Bank Supervision, and transferred its functions, duties and responsibilities to the Department of Banking and Consumer Finance.

Section 81-1-117 abolished the office of state comptroller, and provided that the functions, duties and responsibilities would be assumed by the commissioner of banking and consumer finance.

Cross References — Death or incompetence of bank customer under the Uniform Commercial Code, see § 75-4-405.

State-chartered banks having and possessing the rights, powers, privileges, immunities, duties and obligations of a national bank having its principal place of business in this state, irrespective of any conflict with the provisions of this section, see § 81-5-1(9).

RESEARCH REFERENCES

ALR. Bank's right to apply or set off deposits against debt of depositor not due at time of his death. 7 A.L.R.3d 908.

Am Jur. 1 Am. Jur. 2d, Abandoned, Lost and Unclaimed Property § 15.

§ 81-5-67. Settlement of adverse claims to deposits.

Notice to any bank doing business in this state of an adverse claim to a deposit standing on its books to the credit of any person shall not be effectual to cause the bank to recognize such adverse claimant unless such adverse claimant shall also either procure a restraining order, injunction or other appropriate process against the bank from a court of competent jurisdiction in a cause therein instituted by him wherein the person to whose credit the deposit stands is made a party and served with summons, or shall execute to the bank, in form, and with sureties, acceptable to it a bond, indemnifying it from any and all liability, loss, damage, costs, and expenses for and on account of the payment of such adverse claim or the dishonor of the check or other order of the person to whose credit the deposit stands on the books of the bank.

SOURCES: Codes, 1942, § 5207; Laws, 1934, ch. 146.

Cross References — State-chartered banks having and possessing the rights, powers, privileges, immunities, duties and obligations of a national bank having its

principal place of business in this state, irrespective of any conflict with the provisions of this section, see § 81-5-1(9).

RESEARCH REFERENCES

ALR. Construction, application, and effect of statute relating to notice to bank of adverse claim to deposit. 62 A.L.R.2d 1116.

Bank's right to apply third person's funds, deposited in debtor's name, on debtor's obligation. 8 A.L.R.3d 235.

Post-Sniadach status of banker's right to set off bank's claim against depositor's funds. 65 A.L.R.3d 1284.

Special bank deposits as subject of attachment or garnishment to satisfy depositor's general obligations. 8 A.L.R.4th 998.

Am Jur. 10 Am. Jur. 2d, Banks and Financial Institutions §§ 765, 770.

4 Am. Jur. Pl & Pr Forms (Rev), Banks, Forms 111 et seq.

18 Am. Jur. Proof of Facts 2d 187, Circumstances Rebutting Presumption of Payment of Savings Account.

CJS. 9 C.J.S., Banks and Banking §§ 340, 446, 470, 471 et seq.

§ 81-5-69. Repealed.

Repealed by Laws, 1994, ch. 320, § 11, eff from and after July 1, 1994.

[Codes, 1942, § 5208; Laws, 1934, ch. 146; 1936, ch. 165; 1942, ch. 262; 1976, ch. 368]

Editor's Note — Former § 81-5-69 regulated the amount of interest paid by banks on deposits.

§ 81-5-71. Certifying checks.

No officer, clerk or employee of any bank shall certify to a check unless the amount thereof actually stands to the credit of the drawer on the books of the bank, and any person who shall wilfully violate this provision shall on conviction thereof, be deemed guilty of a misdemeanor and be punished by a fine not exceeding one thousand dollars. The amount of any check certified shall be at once charged to the drawer's account and credited to certified check account, there to remain until said check is retired. Any such check so certified by a duly authorized person shall be a good and valid obligation of the bank in the hands of the holder.

SOURCES: Codes, 1942, § 5219; Laws, 1934, ch. 146.

Cross References — State-chartered banks having and possessing the rights, powers, privileges, immunities, duties and obligations of a national bank having its principal place of business in this state, irrespective of any conflict with the provisions of this section, see § 81-5-1(9).

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

Certification of checks, see also § 75-3-411.

RESEARCH REFERENCES

Am Jur. 10 Am. Jur. 2d, Banks and Financial Institutions §§ 911-916.

CJS. 9 C.J.S., Banks and Banking §§ 384 et seq., 439.

§ 81-5-73. Repealed.

Repealed by Laws, 1997, ch. 542, § 11, eff from and after passage (approved April 10, 1997).

[Codes, 1942, § 5209; Laws, 1934, ch. 146; 1936, ch. 165; 1962, ch. 175; 1968, ch. 255, § 1]

Editor's Note — Former § 81-5-73 set forth the cash reserve requirements for banks.

§ 81-5-75. Authorization for payment of dividend.

No state bank shall declare or pay any dividend upon its common stock unless such bank has received written approval by the Commissioner of Banking and Consumer Finance. Directors declaring a dividend in violation of the provisions of this section shall be personally liable to the full amount of the dividend so declared and it shall be the duty of the commissioner, upon discovering the payment of any such dividend, to forthwith make demand upon the directors that the same be restored to the bank, and upon their failure so to do he shall cause suit to be brought against them in the chancery court of the county in which the bank is located, either in his name or in the name of the bank, to recover the same for the benefit of the bank.

SOURCES: Codes, 1942, § 5210; Laws, 1934, ch. 146; Laws, 1994, ch. 320, § 5, eff from and after July 1, 1994.

Cross References — State-chartered banks having and possessing the rights, powers, privileges, immunities, duties and obligations of a national bank having its principal place of business in this state, irrespective of any conflict with the provisions of this section, see § 81-5-1(9).

JUDICIAL DECISIONS

1. In general.
2. Statute of limitations.

1. In general.

Equity is the proper forum for an action by the receiver of an insolvent bank to recover a dividend disbursed in violation of statute, notwithstanding the right of action is given to creditors. Metzger v. Joseph, 111 Miss. 385, 71 So. 645 (1916).

Where declarations in suit by a receiver to recover dividends paid by insolvent bank alleges receiver authorized by chancery court to bring such suit, it is not demurrable in circuit court on ground of want of jurisdiction. Kretschmar v. Stone, 90 Miss. 375, 43 So. 177 (1907).

2. Statute of limitations.

Code 1906, § 923, imposing personal liability on directors for paying dividends when the corporation is insolvent, is not penal and, therefore, liability under such section is not governed by one-year statute of limitation applicable to penalties. Metzger v. Joseph, 111 Miss. 385, 71 So. 645 (1916).

RESEARCH REFERENCES

CJS. 9 C.J.S., Banks and Banking § 62.

§ 81-5-77. Limit of loans and extensions of credit to single borrower.

(a) The liability to a bank by a person, company, corporation or firm for all loans and extensions of credit, including in the liability of such person, company or firm, where a partnership, the liabilities of the several members thereof, shall not exceed twenty percent (20%) of the aggregate unimpaired capital and unimpaired surplus of the bank.

(b) The following shall not be restricted to or considered as coming within the limitations of twenty percent (20%) prescribed in subsection (a):

(i) Loans and discounts secured by warehouse receipts or shippers' order bills of lading representing actually existing values, provided the amount of such loans and discounts shall not exceed eighty-five percent (85%) of the market value of the commodities representing the actually existing values.

(ii) Loans and discounts secured by bonds, certificates or notes constituting direct obligations of the United States government, or bonds fully guaranteed by the United States government, or by full faith and credit obligations of the State of Mississippi; however, the Commissioner of Banking and Consumer Finance shall from time to time determine and fix the maximum percentage of the par value of all such securities that may be loaned.

(iii) Loans and discounts to the extent that they are secured or covered by guaranties, or by commitments, or agreements to take over or purchase the same, made by any federal reserve bank, or by the United States, or any department, bureau, board, commission or establishment of the United States, including any corporation wholly owned directly or indirectly by the United States; provided that such guaranties, agreements or commitments are unconditional and are to be performed by payment within sixty (60) days after demand; provided, further, that the Commissioner of Banking and Consumer Finance is authorized to define the terms used in this section and may by regulation control the making of loans under this paragraph (iii).

(iv) Loans and discounts secured in full by funds on deposit in time or savings accounts with the lending bank to the credit of the borrower.

(c) The limit on loans and extensions of credit applicable to any one (1) person, company, corporation, or firm under this section shall take into consideration credit exposure arising from derivative transactions between the bank and the party. For purposes of this section, the term "derivative transaction" includes any transaction that is a contract, agreement, swap, warrant, note, or option that is based, in whole or in part, on the value of, any interest in, or any quantitative measure or the occurrence of any event relating to, one or more commodities, securities, currencies, interest or other rates, indices, or other assets.

(d) Any officer or director who approves or makes loans prohibited in this section shall be liable individually for the full amount of the principal and interest of any such loan or extension of credit. If the Commissioner of Banking and Consumer Finance discovers, in any examination of any open bank that there is a loss on any loan or extension of credit made in violation of this section, he shall make demand of all directors and officers approving or making such loan or extension of credit for payment of the entire unpaid balance on any such loan or extension of credit. Like demand shall be made and suit brought by the receiver of any bank in liquidation.

(e) However, this section shall not apply to loans or extensions of credit to the State of Mississippi, or to any political subdivision thereof, nor to any levee district.

SOURCES: Codes, 1942, § 5211; Laws, 1934, ch. 146; Laws, 1936, ch. 165; Laws, 1944, ch. 253, § 1; Laws, 1975, ch. 361; Laws, 1980, ch. 328; Laws, 1995, ch. 308, § 5; Laws, 2013, ch. 303, § 1, eff from and after passage (approved Feb. 19, 2013.)

Cross References — State-chartered banks having and possessing the rights, powers, privileges, immunities, duties and obligations of a national bank having its principal place of business in this state, irrespective of any conflict with the provisions of this section, see § 81-5-1(9).

RESEARCH REFERENCES

Am Jur. 10 Am. Jur. 2d, Banks and Financial Institutions § 413.

§ 81-5-79. Small loans.

Any bank or trust company heretofore or hereafter organized under any general or special law of this state and doing a banking business in this state and any national bank doing business in this state shall have power, in addition to such other powers as it may have, to make loans to any borrower or debtor in an amount not exceeding Five Thousand Dollars ($5,000.00) to be repaid in monthly installments and may charge interest thereon at not exceeding twelve percent (12%) per annum for the entire period of the loan, and aggregate the principal and interest for the entire period of the loan and divide same into monthly installments, and may take security therefor as for other loans.

A charge of Ten Dollars (10) in lieu of interest may be made on any loan payable in a single payment, and a charge of Fifteen Dollars ($15.00) in lieu of interest may be made on any loan payable in monthly installments.

No further interest or discount or service charge, or other charge by way of compensation for the use of such money, shall be made directly or indirectly on any such loan or discount by any such bank, trust company or national bank, made under the provisions of this section, in addition to the charges herein expressly provided for.

However, this section shall in no way repeal any of the other present usury statutes.

SOURCES: Codes, 1942, § 5212; Laws, 1940, ch. 204; Laws, 1958, ch. 167; Laws, 1980, ch. 492, § 3; Laws, 1982, ch. 468, § 3; Laws, 1984, ch. 501, § 3; Laws, 1986, ch. 510, § 13, eff from and after July 1, 1986.

Editor's Note — Laws of 1980, ch. 492, §§ 6, 7, provide as follows:

"SECTION 6. The provisions of this act shall apply only to contracts, agreements, or evidences of indebtedness entered into on or after the effective date of this act, and shall not defeat, extinguish or render void any claim or defense existing with respect to contracts, agreements or evidences of indebtedness entered into prior to the effective date of this act.

"SECTION 7. This act shall not be construed as stating explicitly and by its terms that the State of Mississippi does not want the provisions of sections 501(a)(1), 511 and 521 through 523 of the Depository Institutions Deregulation and Monetary Control Act of 1980 to apply with respect to loans, mortgages, credit sales, and advances made in this state, and the preemption of state law provided by such sections shall remain in full force and effect in the State of Mississippi."

Laws of 1982, ch. 468, § 6, provides as follows:

"SECTION 6. This act shall not be construed as stating explicitly and by its terms that the State of Mississippi does not want the provisions of Sections 501(a)(1), 511 and 521 through 523 of the Depository Institutions Deregulation and Monetary Control Act of 1980 to apply with respect to loans, mortgages, credit sales, and advances made in this state, and the preemption of state law provided by such sections shall remain in full force and effect in the State of Mississippi."

Laws of 1984, ch. 501, § 6, provides as follows:

"SECTION 6. This act shall not be construed as stating explicitly and by its terms that the State of Mississippi does not want the provisions of Sections 501(a)(1), 511, and 521 through 523 of the Depository Institutions Deregulation and Monetary Control Act of 1980, as amended, to apply with respect to loans, mortgages, credit sales, and advances made in this state, and the preemption of state law provided by such sections, as amended, shall remain in full force and effect in the State of Mississippi."

Laws of 1986, ch. 510, § 17, effective July 1, 1986, provides as follows:

"SECTION 17. This act shall not be construed as stating explicitly and by its terms that the State of Mississippi does not want the provisions of Sections 501(a)(1), 511, and 521 through 523 of the Depository Institutions Deregulation and Monetary Control Act of 1980, as amended, to apply with respect to loans, mortgages, credit sales, and advances made in this state, and the preemption of state law provided by such sections, as amended, shall remain in full force and effect in the State of Mississippi."

Cross References — Mississippi Business Tender Offer Law of 1980, see §§ 75-72-101 et seq.

Interest generally, see §§ 75-17-1 et seq.

Small loans, see §§ 75-67-101 et seq.

State-chartered banks having and possessing the rights, powers, privileges, immunities, duties and obligations of a national bank having its principal place of business in this state, irrespective of any conflict with the provisions of this section, see § 81-5-1(9).

JUDICIAL DECISIONS

1. In general.

Modification by this section [Code 1942, § 5212] of the previous statute on the subject so as to allow banks to make charges on small loans did not impair the obligations of a contract but simply withdrew previous impediments and rendered it enforceable as made, where previous statute did not expressly make the contract void for usury. Deposit Guar. Bank & Trust Co. v. Williams, 193 Miss. 432, 9 So. 2d 638 (1942).

RESEARCH REFERENCES

ALR. Bank's liability to customer for imposing allegedly excessive service charges. 73 A.L.R.4th 1028.

Preemption Issues Under Depository Institutions Deregulation and Monetary Control Act. 28 A.L.R. Fed. 2d 467.

§ 81-5-81. Effect of third-party deposits to induce making of unsound loans.

The Federal Deposit Insurance Corporation, the Comptroller of the Currency, the Federal Reserve Bank, or the State Comptroller, Department of Bank Supervision, State of Mississippi, is hereby authorized to freeze any deposit which is made by any third party for the purpose of enticing any bank in the State of Mississippi, whether state or national, into making a loan which is unsafe and unsound and which does not mature prior to any attempt to withdraw such deposit so used to entice the making of said loan. This statute relates to deposits and loans which are not related in the customary function of business but are manipulated and procured by third parties (by whatever name known) for profit and the withdrawal or attempt to withdraw said deposit before said loan is sufficiently satisfied shall be sufficient authority for any state or federal supervising authority to act promptly on evidence presented to it or obtained by said agency. If any bank in the State of Mississippi shall be put into liquidation and such deposit and loan arrangements have made any contribution whatsoever to the insolvency of said bank, then the state or federal agency, the duly appointed liquidating agency or receiver, or the appropriate chancery court in charge of the liquidation of said bank shall have the right and duty to withhold any liquidating dividends or payments for said deposit or deposits until the loan or loans which the deposits have influenced are fully satisfied, and the liquidating agent or receiver shall have the right upon the approval of the chancery court to assign said loan or loans so influenced to the depositor or depositors in satisfaction of said deposit or deposits claimed against the assets of the bank in liquidation.

SOURCES: Codes, 1942, § 5287.9; Laws, 1971, ch. 390, § 1, eff from and after passage (approved March 19, 1971).

Editor's Note — Section 81-1-57 provides that wherever the words "Department of Bank Supervision" or "department," when referring to the Department of Bank Supervision, shall be construed to mean the Department of Banking and Consumer Finance. Section 81-1-117 abolished the Department of Bank Supervision, and transferred its functions, duties and responsibilities to the Department of Banking and Consumer Finance.

Section 81-1-57 provides that wherever the words "state comptroller" or "comptroller," when referring to the office of state comptroller of banks, shall be construed to mean the commissioner of banking and consumer finance. Section 81-1-117 abolished the office of state comptroller, and provided that the functions, duties and responsibilities would be assumed by the commissioner of banking and consumer finance.

Cross References — State-chartered banks having and possessing the rights, powers, privileges, immunities, duties and obligations of a national bank having its principal place of business in this state, irrespective of any conflict with the provisions of this section, see § 81-5-1(9).

RESEARCH REFERENCES

ALR. What constitutes violation of provisions of Bank Holding Company Act prohibiting tying arrangements (12 USCS § 1972(1)). 74 A.L.R. Fed. 578.

§ 81-5-83. Limit of borrowing power of banks.

No bank chartered and doing business under the laws of this state shall issue bills payable or be liable on rediscounts at any time to a total amount in excess of three times its capital and surplus. However, this limit may be exceeded by a bank with the consent and approval in writing, of the state comptroller. Any violation of this provision by a bank shall authorize the state comptroller to deal with it as a bank being operated in violation of the laws, provided, however, that this section shall in no wise impair any obligation of banks for payment of loans and rediscounts in excess of the limit herein provided, nor shall any bank owing money heretofore borrowed in excess of this limit be held to be acting in violation of the law as to such existing loans.

SOURCES: Codes, 1942, § 5213; Laws, 1934, ch. 146.

Editor's Note — Section 81-1-57 provides that wherever the words "state comptroller" or "comptroller," when referring to the office of state comptroller of banks, shall be construed to mean the commissioner of banking and consumer finance.

Section 81-1-117 abolished the office of state comptroller, and provided that the functions, duties and responsibilities would be assumed by the commissioner of banking and consumer finance.

Cross References — State-chartered banks having and possessing the rights, powers, privileges, immunities, duties and obligations of a national bank having its principal place of business in this state, irrespective of any conflict with the provisions of this section, see § 81-5-1(9).

RESEARCH REFERENCES

Am Jur. 10 Am. Jur. 2d, Banks and Financial Institutions §§ 483, 484, 607, 608.

CJS. 9 C.J.S., Banks and Banking §§ 23, 243.

§ 81-5-85. Consolidation, conversion or merger of state or state and national banks, state or federal savings and loan associations and state-chartered banks, and state or federal savings banks and state-chartered banks.

Any two (2) or more state-chartered banks, or any national bank and any state-chartered bank, or any state or federal savings and loan association and any state-chartered bank, or any state or federal savings bank and any state-chartered bank, may, with the approval of the commissioner, consolidate with or merge into one (1) state-chartered bank, under the charter of the existing state bank, on such terms and conditions, as may be lawfully agreed upon by a majority of the board of directors of each bank proposing to consolidate. Such agreement shall be ratified and confirmed by the affirmative vote of the shareholders or members of each such institution owning at least two-thirds (⅔) of its capital stock outstanding, or of fifty-one percent (51%) or more of the total number of members, at a meeting to be held on call of the directors, notice of which specifying the purpose shall be given in the manner required by the bylaws, or in the absence of such bylaw then by sending such notice to each shareholder of record by registered mail at least ten (10) days prior to such meeting. The capital stock of such consolidated bank shall not be less than that required under the Mississippi banking laws for the organization of a bank in the place in which it is located. And all the rights, franchises and interests of the institutions so consolidated in and to every species of property, personal and mixed, and choses in action thereto belonging, shall be deemed to be transferred to and vested in such bank into which they are consolidated without any deed or other transfer, and the said consolidated bank shall hold and enjoy the same and all rights of property, franchises and interests in the same manner and to the same extent as were held and enjoyed by the institutions so consolidated therewith.

Any national bank, state or federal savings and loan association, or state or federal savings bank may apply for conversion into a state-chartered bank upon the affirmative vote of the shareholders owning at least two-thirds (⅔) of its capital stock outstanding, or of fifty-one percent (51%) or more of the total number of the members, at a meeting called by the directors subject to the manner previously described in this section. Upon such affirmative vote, the converting institution may apply for a certificate of authority by filing with the commissioner a certificate signed by its president and cashier which sets forth the corporate action herein prescribed and asserts that the institution has complied with the provisions of the laws of the United States. The converting institution shall also file with the commissioner the plan of conversion and the proposed amendments to its articles of incorporation as approved by the stockholders for the operation of the institution as a state bank. Upon receipt of the prescribed application, the commissioner shall examine all facts associated with the conversion. The expenses and cost incurred for such special examination shall be paid by the institution applying for permission to convert. The commissioner shall present his findings and recommendations to the State

Board of Banking Review for consideration. Upon approval by the State Board of Banking Review, the commissioner shall issue a certificate of authority to the applicant allowing the conversion to proceed.

Any bank, savings and loan association or savings bank chartered by the State of Mississippi is hereby authorized to convert into, consolidate with, or merge with a national bank domiciled in the State of Mississippi, with the national bank charter surviving, without approval of the Department of Banking and Consumer Finance, the Commissioner of Banking and Consumer Finance, or any state authority whatsoever.

SOURCES: Codes, 1942, § 5214; Laws, 1934, ch. 146; Laws, 1978, ch. 316, § 1; Laws, 1995, ch. 308, § 6; Laws, 1997, ch. 542, § 5, eff from and after passage (approved April 10, 1997).

Cross References — State-chartered banks having and possessing the rights, powers, privileges, immunities, duties and obligations of a national bank having its principal place of business in this state, irrespective of any conflict with the provisions of this section, see § 81-5-1(9).

Mississippi Business Tender Offer Law of 1980, see Chapter 72 of Title 75.

JUDICIAL DECISIONS

1. In general.

The only authority that a bank has to operate is that which is contained in its charter, and when two or more banks consolidate, they become one bank and operate under the charter of one of the existing banks. Coahoma Bank & Trust Co. v. Bowen, 218 So. 2d 868 (Miss. 1969).

RESEARCH REFERENCES

ALR. Construction and application of 12 USCS §§ 214-214c authorizing conversion of national bank into, or its merger or consolidation with, state bank. 15 A.L.R. Fed. 817.

Denial by Board of Governors of Federal Reserve System of application for bank merger, consolidation, or acquisition on anticompetitive grounds under § 3(c) of Bank Holding Company Act of 1956 (12 USCS § 1842(c)). 71 A.L.R. Fed. 438.

Am Jur. 10 Am. Jur. 2d, Banks and Financial Institutions §§ 191, 192 et seq., 238.

3B Am. Jur. Legal Forms 2d, Banks §§ 38:96 et seq.

CJS. 9 C.J.S., Banks and Banking §§ 156-163.

§ 81-5-87. Holding of real estate by bank.

Any banking corporation doing business in this state may purchase, hold and convey real estate for the following purposes and no others:

(a) Such real estate as shall be necessary in which to transact the business of any such bank, including with its banking offices, premises in the same building to rent as a source of income, also such real estate and improvements necessary for the operation and conduct of its branch banks, branch offices, drive-in windows and parking facilities not connected to the main office, branch banks or branch offices. The book value of the bank's real estate shall not exceed fifty percentum (50%) of its net capital funds as published by the last preceding call statement as of December 31, and this shall be without regard to population but subject to the approval of the state comptroller; however, the book value of such real estate and improvements shall be reduced each year the amount that is allowable for depreciation by the Internal Revenue Service until such book value shall be reduced to at least twenty-five percentum (25%) of the net capital funds as shown by its last published statement as of December 31. None of the facilities, main banking quarters, branch banks, branch offices, drive-in windows or parking facilities not connected to the main office, branch banks or branch offices shall be purchased or commenced without first having the approval of the state comptroller.

(b) Such real estate as shall be purchased by or conveyed to such bank in satisfaction of or on account of debts previously contracted in the usual course of its business.

(c) Such real estate as shall be purchased at sale under judgments, decrees or mortgages, or deeds of trust, foreclosure under securities held by such bank or under any security or lien which is a superior lien to that held by said bank.

(d) Upon approval of the state comptroller, a bank may purchase additional real estate for future expansion or future new quarters but if said real estate is not developed for the purpose intended and purchased, the said real estate shall be disposed of within a period of five (5) years or reduced to a book value of one dollar ($1.00).

Any real estate acquired as provided in subsections (b) and (c) of this section shall be carried in the bank statement at such sound values as may be approved by the state comptroller, not to exceed its cost to the bank, and shall be sold within five years after the title thereto is acquired; unless the consent of the state comptroller is obtained in writing, extending such period; provided, however, no such extension shall be for more than five years. If any such real estate is not sold within the time herein limited, or within the time as extended by the state comptroller, it shall not thereafter be carried as a book asset of the bank in excess of one dollar ($1.00). It is not the purpose of other real estate acquired under subsections (b) and (c) of this section to be treated as part of the fifty percentum (50%) of net capital recited in the first paragraph of this section.

SOURCES: Codes, 1942, § 5216; Laws, 1934, ch. 146; Laws, 1936, ch. 165; Laws, 1952, ch. 182; Laws, 1970, ch. 271, § 1, eff from and after passage (approved April 3, 1970).

Editor's Note — Section 81-1-57 provides that wherever the words "state comptroller" or "comptroller", when referring to the office of state comptroller of banks, shall be construed to mean the commissioner of banking and consumer finance.

Section 81-1-117 abolished the office of state comptroller, and provided that the functions, duties and responsibilities would be assumed by the commissioner of banking and consumer finance.

Cross References — State-chartered banks having and possessing the rights, powers, privileges, immunities, duties and obligations of a national bank having its principal place of business in this state, irrespective of any conflict with the provisions of this section, see § 81-5-1(9).

Real estate holdings of insurance companies, see § 83-19-55.

JUDICIAL DECISIONS

1. In general.

Good faith of bank in acquiring, pursuant to settlement of debt, 360 acres of land from vendee of patentees from state after tax sale thereof to state, would be presumed in view of provisions of banking law entitling a bank to own such real estate as should be purchased by or conveyed to the bank in satisfaction of or on account of debts previously contracted in the course of its business. Merchants & Mfrs. Bank v. State, 200 Miss. 291, 25 So. 2d 585 (1946).

Bank's conditional sale of realty to avoid statute directing charging off of realty held over five years was deemed bona fide for tax purposes. Board of Supvrs. v. Riverside Bank, 158 Miss. 653, 131 So. 80 (1930).

RESEARCH REFERENCES

Am Jur. 10 Am. Jur. 2d, Banks and Financial Institutions §§ 479, 481, 501, 502, 699-602.

3B Am. Jur. Legal Forms 2d, Banks § 38:141.

CJS. 9 C.J.S., Banks and Banking § 241.

§ 81-5-89. Limitations upon acceptances.

A state bank may accept drafts or bills of exchange drawn upon it having not more than six (6) months' sight to run, exclusive of days of grace, which grew out of transactions involving the shipment of goods, provided shipping documents conveying or securing title are attached as security at the time of acceptance of such drafts and bills of exchange or which are secured at the time of acceptance by warehouse receipts or other such documents conveying or securing title covering readily marketable staples not subject to rapid deterioration.

No bank shall accept bills for any one person, company, firm or corporation to an amount equal at any time in the aggregate to more than ten per centum of its paid-up and unimpaired capital stock and surplus; and no such bank shall accept such bills to an amount equal at any time in the aggregate to more than one-half of its paid-up and unimpaired capital and surplus.

SOURCES: Codes, 1942, § 5217; Laws, 1934, ch. 146.

Cross References — Definition and operation of acceptance of commercial paper, see § 75-3-410.

Collection of documentary drafts under the Uniform Commercial Code, see §§ 75-4-501 et seq.

Confirmation of letter of credit, see § 75-5-107.

Warehouse receipts and bills of lading generally, see §§ 75-7-601 et seq.

State-chartered banks having and possessing the rights, powers, privileges, immunities, duties and obligations of a national bank having its principal place of business in this state, irrespective of any conflict with the provisions of this section, see § 81-5-1(9).

RESEARCH REFERENCES

ALR. Bank's liability to nonsigning payee for payment of check drawn to joint payees without obtaining endorsement by both. 47 A.L.R.3d 537.

§ 81-5-91. Repealed.

Repealed by Laws, 1998, ch. 392, § 3, eff from and after passage (approved March 17, 1998).

[Codes, 1942, § 5220; Laws, 1934, ch. 146; 1968, ch. 253, § 1, eff from and after July 1, 1970]

Editor's Note — Former § 81-5-91 related to par clearance of checks and allowed exchange to be charged on certain items.

§ 81-5-93. Clearinghouse associations authorized.

Banks or banking institutions in any municipality or county or counties in this state may organize and establish clearinghouse associations, composed of such banks and banking institutions as may become members thereof, by voluntary action for the purpose of effecting daily settlements and exchanges by and between the associate banks, the payment or settlements at such clearinghouse of daily balances between such members resulting from exchanges, payment of checks and other orders of money and for the purpose of making provision for the proper conduct and management of the banking operations of such municipality or county or counties, and of the members of such association. Such clearinghouse associations may or may not be incorporated. If incorporated, a clearinghouse association shall be organized as a corporation without capital stock and not organized for profit or gain and the stock thereof may be held by the member banks, each such member bank being entitled to hold not more than one (1) share therein.

SOURCES: Codes, 1942, § 5221; Laws, 1934, ch. 146; Laws, 1982, ch. 341, eff from and after July 1, 1982.

Cross References — Bank deposits and collections under the Uniform Commercial Code, see §§ 75-4-101 et seq.

State-chartered banks having and possessing the rights, powers, privileges, immunities, duties and obligations of a national bank having its principal place of business in this state, irrespective of any conflict with the provisions of this section, see § 81-5-1(9).

Powers of clearinghouse associations, see § 81-5-95.

RESEARCH REFERENCES

Am Jur. 10 Am. Jur. 2d, Banks and Financial Institutions §§ 962-988.

CJS. 9 C.J.S., Banks and Banking §§ 681-683.

§ 81-5-95. Powers of clearinghouse associations.

Clearinghouse associations, by the action of the members thereof, shall have the power to adopt and enact rules, regulations and bylaws providing: (a) for officers and business agents of such clearinghouse association, and for the maintenance of same; (b) for the conduct of the affairs and business of the association; (c) for the settlement of differences or controversies between members thereof relating to banking transactions; (d) for aid from such clearinghouse association or the members thereof to any bank or member which may become involved or embarrassed; (e) to collect dues and payments as fixed by the bylaws or regulations from members thereof, for any of the purposes of such association; (f) to advance moneys or loans to any member, on deposit of collateral or other securities; (g) to provide uniform charges for collections or orders, for uniform rates of exchange and discounts provided or required by the general laws of the State of Mississippi, and for service charged upon unprofitable accounts, and for handling checks drawn against insufficient funds; (h) and generally to have all other powers usual and customary for clearinghouse associations, to encourage a faithful and honest administration of banking trusts and public duties, to aid in the preservation of public credit and of confidence in the financial system and conditions of the State of Mississippi, and the business communities thereof. All rates, rules, regulations and bylaws promulgated must, before becoming effective, receive the approval of the state comptroller. Discretionary power is vested in the state comptroller to supervise all rates, rules, regulations and bylaws.

SOURCES: Codes, 1942, § 5222; Laws, 1934, ch. 146.

Editor's Note — Section 81-1-57 provides that wherever the words "state comptroller" or "comptroller", when referring to the office of state comptroller of banks, shall be construed to mean the commissioner of banking and consumer finance.

Section 81-1-117 abolished the office of state comptroller, and provided that the functions, duties and responsibilities would be assumed by the commissioner of banking and consumer finance.

Cross References — Bank deposits and collections under the Uniform Commercial Code, see §§ 75-4-101 et seq.

State-chartered banks having and possessing the rights, powers, privileges, immunities, duties and obligations of a national bank having its principal place of business in this state, irrespective of any conflict with the provisions of this section, see § 81-5-1(9).

RESEARCH REFERENCES

Am Jur. 10 Am. Jur. 2d, Banks and Financial Institutions §§ 962-988.

CJS. 9 C.J.S., Banks and Banking §§ 681-683.

§ 81-5-97. Banking hours.

The commissioner of banking and consumer finance may, from time to time, adopt and promulgate rules regulating banking hours, and such rules shall have all the force and effect of law. In addition thereto, the commissioner may permit a bank to close its doors for business at such time or times during the week as the commissioner determines will not prevent the rendering of proper and reasonable banking service to the community and trade area in which the bank is located. The commissioner shall not authorize any bank to close for more than one whole day during any week, state and federal legal holidays and Sundays excepted; provided, however, that in the event any state or federal legal holiday shall fall on a Saturday, then the commissioner may permit banks to observe the preceding Friday as a legal holiday, or if such holiday shall fall on Sunday, then the commissioner may permit banks to observe the next following Monday as a legal holiday.

SOURCES: Codes, 1942, § 5223; Laws, 1934, ch. 146; Laws, 1954, ch. 165; Laws, 1962, ch. 176; Laws, 1976, ch. 369; Laws, 1982, ch. 314, eff from and after July 1, 1982.

Cross References — Time of receipt of items under the Uniform Commercial Code regulation of bank deposits and collections, see § 75-4-107.

State-chartered banks having and possessing the rights, powers, privileges, immunities, duties and obligations of a national bank having its principal place of business in this state, irrespective of any conflict with the provisions of this section, see § 81-5-1(9).

Establishment of electronic terminals by banks, see § 81-5-100.

§ 81-5-98. Drive-in teller windows and branch offices considered to be branch banks.

Drive-in teller windows and branch offices in operation on July 1, 1986, shall on such date, and thereafter, be considered branch banks for the purpose of applying the branching provisions of this chapter and are authorized to continue operating as branch banks.

SOURCES: Laws, 1986, ch. 469, § 7, eff from and after July 1, 1986.

Cross References — State-chartered banks having and possessing the rights, powers, privileges, immunities, duties and obligations of a national bank having its principal place of business in this state, irrespective of any conflict with the provisions of this section, see § 81-5-1(9).

§ 81-5-99. Repealed.

Repealed by Laws, 1986, ch. 469, § 14, eff from and after July 1, 1986. [Codes, 1942, § 5224.3; Laws, 1964, ch. 224, § 1; 1972, ch. 318, § 1]

Editor's Note — Provisions concerning drive-in teller's windows now appear in § 81-5-98.

§ 81-5-100. Establishment of electronic banking terminals.

(1) For the purposes of this section, the following words shall have the meaning herein described unless the context shall otherwise require:

(a) "Electronic terminal" means an unmanned electronic device owned or operated by a federally insured bank or thrift through which a consumer may initiate an electronic fund transfer.

(b) "Electronic fund transfer" means any of the following:

(i) The withdrawal of cash from or the deposit of cash or checks into an unmanned electronic device, such as an automatic teller machine, but not including night depositories;

(ii) An application for or acceptance of a loan through use of an unmanned electronic device;

(iii) The transfer of funds between accounts through use of an unmanned electronic device; or

(iv) The issuance of a check by an unmanned electronic device.

(c) "Electronic fund transfer" does not mean access to accounts, the application for or acceptance of a loan, the transfer of funds between accounts or other banking services accomplished through the use of a personal computer or telephone.

(2) A state bank or thrift, with the approval of the Commissioner of Banking and Consumer Finance, may establish electronic terminals.

(3) A bank desiring to establish such an electronic terminal shall file with the commissioner a written application requesting authority to establish such a terminal. Upon receipt of such application, the commissioner shall make inquiry into the facts sufficient to enable him to determine whether or not the proposed electronic terminal will provide bank customers with convenient access to the electronic transfer of funds. If the commissioner's finding is favorable to the application, he shall grant the applicant a written permit to establish the terminal. These rights are extended to national banks upon the approval of the Comptroller of the Currency of the United States of America.

(4) For the use of its electronic terminals connected to sharing networks or systems, a bank may impose a fee if imposition of the fee is disclosed at a time and in a manner that allows a user to terminate or cancel the transaction without incurring the transaction fee. Such fee shall not exceed Two Dollars ($2.00) or four percent (4%) of the gross amount of the transaction, whichever is greater. An agreement to share electronic terminals shall not prohibit, limit or restrict the right of a bank to charge such fees for the use of its electronic terminals as allowed by state or federal law, or require a bank to limit or waive its rights or obligations under this section.

SOURCES: Laws, 1981, ch. 338, § 1; Laws, 1994, ch. 438, § 1; Laws, 1996, ch. 400, § 45, eff from and after passage (approved March 19, 1996).

Cross References — Bank deposits and collections, generally, see §§ 75-4-101 et seq.

State-chartered banks having and possessing the rights, powers, privileges, immunities, duties and obligations of a national bank having its principal place of business in this state, irrespective of any conflict with the provisions of this section, see § 81-5-1(9).

Banking hours, generally, see § 81-5-97.

Drive-in teller's windows, see § 81-5-98.

Branch banks, generally, see §§ 81-7-1 et seq.

RESEARCH REFERENCES

ALR. Maintenance of computer terminal in retail store for purpose of effecting transfer of funds between financial institution and its depositors as conduct of banking business by store. 73 A.L.R.3d 1282.

Am Jur. 10 Am. Jur. 2d, Banks and Financial Institutions §§ 623-626.

Am. Jur. 2d New Topic Service, Consumer Credit Protection §§ 156 et seq.

3A Am. Jur. Legal Forms 2d, Banks §§ 38:155 (electronic fund transfer agreement), 38:172 (electronic fund transfer disclosure).

§ 81-5-101. Dissolution of solvent banks.

When the owners of two-thirds of the capital stock of any solvent corporation engaged in a banking business shall have determined and voted to dissolve the corporation, they shall proceed in the following manner, to-wit:

(a) The corporation shall advise the department of bank supervision by registered mail, over the signature of the board of directors of said corporation, of their intention to liquidate, accompanied by a certified copy of the minutes of the stockholders meeting authorizing the liquidation, and shall cause notice to be published once each week for three consecutive weeks in some newspaper published within the county in which the corporation is domiciled, giving the date of the proposed liquidation, and calling on all creditors and depositors to present for payment their claims against such corporation not later than sixty days after said date of liquidation. With said notice to the department of bank supervision the corporation shall file a detailed statement of its assets and liabilities.

(b) The stockholders of the corporation shall, by and with the approval of the state comptroller appoint a special agent who shall have charge of said liquidation and shall be responsible to the creditors and stockholders of such corporation and to the department of bank supervision for the proper liquidation of the affairs of the corporation. The special agent shall furnish bond to be approved by the state comptroller for the faithful performance of his duties as special agent and shall receive as salary not more than $200.00 per month out of the assets of the liquidating bank while actively engaged in the liquidation of the affairs of the bank and shall be at all times under the supervision of the department of bank supervision. The certificate of appointment of the special agent shall be filed in the office of the department of bank supervision, and a certified copy filed in the office of the chancery clerk of the county in which the bank is domiciled.

(c) Upon the date set for the liquidation of the bank as per published notice the special agent shall take charge and file with the department of bank supervision a sworn detailed statement of the assets and liabilities of the bank as shown by the books of the same, a certified copy to be filed in the office of the chancery clerk of said county. He shall proceed to pay in full as presented all claims of creditors and depositors and shown by the books of the bank and all claims which may be proven against the bank.

(d) A sufficient bond to be approved by the state comptroller in such amount as he may require shall be furnished by the stockholders of the bank made and conditioned to insure the payment of all liabilities as shown by the books of the bank and all proven claims against the bank. The said bond shall be filed in the office of the department of bank supervision. Suit may be brought upon this bond by any creditor claimant, and such suit shall be filed in the chancery court of the county in which the corporation is domiciled. No suit may be brought upon such bond except within four months after date of liquidation as provided in paragraph (a) of this section. When any such suit shall be brought on said bond, notice shall be given by publication in a newspaper published in the county of the domicile of the bank, requiring all creditors and claimants to intervene in order to determine in one proceeding all claims of creditors.

(e) At the expiration of sixty days from the date of the liquidation as provided in paragraph (a) of this section, the special agent shall file with the department of bank supervision a detailed report of all his proceedings, collections and disbursements and list of all assets remaining and of all liabilities still unpaid or unclaimed, a certified copy of which shall be filed in the office of the chancery clerk of the county. A list of all unclaimed deposits or creditors as shown by the books together with the amounts due them, shall be delivered in cash, to the department of bank supervision to be deposited by the state comptroller in some bank subject to their order for payment upon presentation of claims by said depositors or creditors. The remaining assets of the bank may be distributed among the stockholders, provided the stockholders shall make sufficient bond approved by the state comptroller in amounts of the capital, surplus and undivided profits of the banks, payable to the State of Mississippi, said bond to expire four months from the date of liquidation as provided in paragraph (a) of this section, if no claim or suit has been filed against such bond. At the expiration of this bond the state comptroller shall give notice by publication for three consecutive weeks in some local or county newspaper of the expiration of said bond, and the said bond shall be relieved from further liability, and the stockholders of the corporation shall be relieved from further liability as stockholders of such corporation.

SOURCES: Codes, 1942, § 5225; Laws, 1934, ch. 146.

Editor's Note — Section 81-1-57 provides that wherever the words "department of bank supervision" or "department" when referring to the department of bank supervision, shall be construed to mean the department of banking and consumer finance. Section 81-1-117 abolished the department of bank supervision, and transferred its functions, duties and responsibilities to the department of banking and consumer finance.

Section 81-1-57 provides that wherever the words "state comptroller" or "comptroller,"when referring to the office of state comptroller of banks, shall be construed to mean the commissioner of banking and consumer finance. Section 81-1-117 abolished the office of state comptroller, and provided that the functions, duties and responsibilities would be assumed by the commissioner of banking and consumer finance.

Cross References — State-chartered banks having and possessing the rights, powers, privileges, immunities, duties and obligations of a national bank having its principal place of business in this state, irrespective of any conflict with the provisions of this section, see § 81-5-1(9).

Liquidation of solvent bank, see § 81-9-41.

Depositors' liquidation, see §§ 81-9-43 et seq.

Liquidation of savings associations, see § 81-12-69.

Voluntary dissolution of credit union, see § 81-13-59.

RESEARCH REFERENCES

Am Jur. 10 Am. Jur. 2d, Banks and Financial Institutions §§ 207-215, 1020, 1182-1184, 1197.

CJS. 9 C.J.S., Banks and Banking §§ 596-599.

§ 81-5-103. General penalty.

Any banker, officer, employee, director or agent of any state bank who shall knowingly or wilfully neglect to perform any duty required by law, where no other penalty is provided or who shall fail to conform to any lawful requirement made by the department of bank supervision shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not to exceed $500.00 or by imprisonment in the county jail not to exceed six months, or by both such fine and imprisonment. And each officer or employee of the department of bank supervision who shall wilfully fail to perform any duty required by law, where no other penalty is prescribed, shall be guilty of a misdemeanor and on conviction thereof shall be punished by a fine not to exceed $500.00 or by imprisonment in the county jail not to exceed six months, or by both such fine and imprisonment.

SOURCES: Codes, 1942, § 5282; Laws, 1934, ch. 146.

Editor's Note — Section 81-1-57 provides that wherever the words "department of bank supervision" or "department" when referring to the department of bank supervision, shall be construed to mean the department of banking and consumer finance.

Section 81-1-117 abolished the department of bank supervision, and transferred its functions, duties and responsibilities to the department of banking and consumer finance.

Cross References — State-chartered banks having and possessing the rights, powers, privileges, immunities, duties and obligations of a national bank having its principal place of business in this state, irrespective of any conflict with the provisions of this section, see § 81-5-1(9).

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

ALR. What constitutes willful misapplication of bank funds by bank officer or employee in violation of 18 USCS § 656. 51 A.L.R. Fed. 420.

§ 81-5-105. Standard of care for bank directors established.

(1) Bank and bank holding company officers and directors shall be deemed to stand in a fiduciary relationship to their bank or bank holding company and its stockholders and shall discharge the duties of their respective positions in good faith and with that diligence, care, judgment and skill as provided in subsection (2) of this section. Nothing contained in this section shall derogate from any indemnification authorized by either state or federal law.

(2) A director or officer of a bank or bank holding company shall not be held personally liable to the corporation or its successor, or the shareholders thereof, for monetary damages unless the director or officer acted in a grossly negligent manner as defined in subsection (5) of this section or engaged in conduct which demonstrates a greater disregard of the duty of care than gross negligence, such as intentional tortious conduct or intentional breach of his duty of loyalty or intentional commission of corporate waste.

(3) A director of a bank or bank holding company shall, in the performance of his duties, be fully protected in relying in good faith on the records of the bank or bank holding company and in relying in good faith upon information, opinions, reports or statements presented to him, to the bank or bank holding company, to the board of directors or to any committee thereof by any of the bank's or bank holding company's officers or employees or by any committee of the board of directors, or by any counsel, appraiser, engineer or independent or certified public accountant selected with reasonable care by the board of directors or any committee thereof or by any officer having the authority to make such selection or by any other person as to matters the director in good faith believes are within such selected person's professional or expert competence, such person having been selected in good faith by the board of directors or any committee thereof or any officer having the authority to make such selection.

(4) Notwithstanding any other law to the contrary, the provisions of this section are the sole and exclusive law governing the relation and liability of directors and officers to their bank or bank holding company, or their successor, or to the shareholders thereof, or to any other person or entity. The provisions of this section shall be retroactive.

(5) As used in this section, the term "gross negligence" means a reckless disregard of, or a carelessness amounting to gross indifference to, the best interests of the bank or bank holding company or the shareholders thereof, and involves a substantial deviation below the standard of care expected to be maintained by a reasonably careful person under like circumstances.

(6) The provisions of this section shall not affect the application of common law or any other statute relating to the duties of officers and directors of other corporate entities.

SOURCES: Laws, 1994, ch. 645, § 1, eff from and after passage (approved April 8, 1994).

Cross References — Qualifications of directors, see § 81-5-105.

RESEARCH REFERENCES

Am Jur. 10 Am. Jur. 2d, Banks and Financial Institutions §§ 350 et seq.

Law Reviews. Robertson, The Law of Corporate Governance: Coming of Age in Mississippi? 65 Miss. L. J. 477, Spring, 1996.

DEPOSITORY FINANCIAL INSTITUTIONS SELF-EVALUATION REPORTS

SEC.
81-5-151. Definitions.
81-5-153. Discovery and admissibility in evidence of self-evaluation reports of depository financial institutions; divulgence or dissemination of information in reports; exemption from Public Records Act.

§ 81-5-151. Definitions.

For purposes of Sections 81-5-151 and 81-5-153, the following words and phrases shall have the meanings ascribed herein, unless the context requires otherwise:

(a) "Bank" shall have the same definition as set forth in Section 81-3-1 and shall include the bank holding company, affiliates, and subsidiaries of a bank.

(b) "Self-assessment" means a voluntary, self-initiated internal assessment, audit or review of a bank, its practices, policies and procedures or the bank's review of a facility or activity at a facility acting under contract as the bank's service provider, including, but not limited to, mortgage servicers and sub-servicers, credit and debit card processors, and providers of loan document systems.

(c) "Self-assessment report" means any document, including any audit, report, finding, communication or opinion or any draft of an audit, report, finding, communication or opinion, prepared by internal personnel or by outside attorneys, accountants or consultants as a part of or in connection with a self-assessment that is made in good faith, and which report is not published outside the bank unless publication is made to bank regulators or to third parties acting pursuant to an agreement to preserve its confidentiality. Such agreement to preserve confidentiality need not be in writing and may be evidenced by an indication of confidentiality on the face of any such self-assessment report, or by a verbal agreement regarding its confidentiality.

(d) "Bank regulators" means any state, federal or municipal governmental agency, bureau, commission, office or other governmental entity charged with the regulation and/or supervision of a bank or regulation or supervision of any activity in which a bank may be engaged. The term shall include, but is not limited to, the Office of the Comptroller of the Currency, the Federal Reserve Board, the Federal Deposit Insurance Corporation, the Consumer Financial Protection Bureau, the Fair Trade Commission, and the Mississippi Department of Consumer Finance and Banking.

(e) "Banking law" means any federal, state or local statute, rule or regulation affecting or governing a bank or any activity in which a bank is or may be engaged, or any order, award, agreement, release, permit, license, standard or notice or issued by a federal, state or local court, agency, or governmental authority in pursuance thereof.

SOURCES: Laws, 2012, ch. 444, § 1, eff from and after July 1, 2012.

§ 81-5-153. Discovery and admissibility in evidence of self-evaluation reports of depository financial institutions; divulgence or dissemination of information in reports; exemption from Public Records Act.

(1) A self-assessment report is privileged and is not admissible in any legal or investigative action in any civil or administrative proceeding andis not subject to any discovery under the rules of civil procedure or administrative procedure, unless:

(a) The bank, irrespective of whether the self-assessment was conducted and/or prepared by a private contractor hired by the bank, expressly waives the protections of this section; or

(b) The court of record or hearing officer, who shall be neutral and independent, after an in camera review, determines that:

(i) The self-assessment report shows that the bank is not or was not in substantial compliance with a material provision of banking law, and

(ii) The bank did not initiate good-faith efforts to achieve substantial compliance with a material provision of banking law within a reasonable time after the noncompliance was discovered, and

(iii) The bank's failure to comply caused material harm to a bank customer or consumer.

(iv) For purposes of subparagraphs (i) and (ii) of this paragraph (b) only, if the evidence shows noncompliance by the bank, the bank may demonstrate that appropriate efforts to achieve compliance were or are being taken by establishing a phased schedule of actions to be taken to bring the bank into compliance, and those efforts shall protect the bank's self-assessment report(s) from disclosure.

(c) The court of record or a hearing officer, who shall be neutral and independent, after an in camera review, determines that the privilege is being asserted for a fraudulent purpose or that the self-assessment report was prepared to avoid disclosure of information in an investigative, administrative or judicial proceeding that was underway at the time of its preparation, or for which the bank had been provided written notification that an investigation into a specific violation had been initiated, or it is found that a condition exists that demonstrates imminent and substantial harm to bank customers or consumers.

(2) The self-evaluation privilege does not apply to:

(a) Information in the possession of a regulatory agency obtained through observation, sampling, examination or otherwise and which is subject to public disclosure under the Mississippi Public Records Act of 1983; or

(b) Information obtained through any source independent of the self-assessment report and which was not protected by a confidentiality agreement; or

(c) Evidence existing before the commencement of and independent of the voluntary self-assessment, which is not protected by a confidentiality agreement and is not related to a request for compliance assistance from bank regulators.

(3)(a) Upon a showing by any party, based upon independent knowledge, that probable cause exists to believe that an exception to the self-assessment privilege under subsection (1) of this section is applicable to a self-assessment report or that privilege does not apply to a self-assessment report under the provisions of subsection (2) of this section, then a court record or hearing officer, who shall be neutral and independent, may allow that party limited access to the self-assessment report for the purposes of an in-camera review only. The court of record or the hearing officer may grant limited access to all or part of the self-assessment under the provisions of this subsection (3) upon such conditions as may be necessary to protect the confidentiality of the self-assessment report. A moving party who obtains access to a self-assessment report under the provisions of this subsection (3) may not divulge any information from the report except as specifically allowed by the court or hearing officer.

(b) If any party divulges all or any part of the information contained in a self-assessment report in violation of the provisions of paragraph (a) of this subsection (3) or if any other person knowingly divulges or disseminates all or any part of the information contained in a self-assessment report that was provided to the person in violation of the provisions of paragraph (a) of this subsection (3), the party or other person is liable for any damages caused by the divulgence or dissemination of the information that are incurred by the bank. The court or hearing officer may issue such contempt orders and sanctions against the offending party or such party's legal counsel as may be necessary to ensure compliance.

(4) Nothing in this section limits, waives or abrogates the scope or nature of any statutory or common law privilege.

(5) A bank asserting a self-assessment privilege has the burden of proving a prima facie case as to the privilege. A party seeking disclosure of a self-assessment report has the burden of proving that such a privilege does not exist under this section.

(6) All self-assessment reports that are protected by the self-assessment privilege created by this section shall be privileged and exempt from the provisions of the Mississippi Public Records Act in accordance with Section 25-61-11.

SOURCES: Laws, 2012, ch. 444, § 2, eff from and after July 1, 2012.

Cross References — Mississippi Public Records Act of 1983, see §§ 25-61-1 et seq.

CHAPTER 7

Branch Banks

Sec.

81-7-1. Application and procedure for establishment of branch banks; appeal; judicial review.
81-7-3. How branch banks to be named.
81-7-5. Repealed.
81-7-7. Establishment of branch banks de novo or by merger or consolidation.
81-7-8. Restrictions upon establishment of branch banks.
81-7-9. Capital requirements for branch banking system.
81-7-11. Issues of stock for annexation of branches.
81-7-13. Discontinuance and removal of branch banks.
81-7-15. Examination of branch banks.
81-7-17. National banks may establish branches.
81-7-19. Operation of multibank holding companies permitted; definitions; restrictions; divestment; enforcement.
81-7-21. Certain branches not affected.
81-7-23. Application of chapter.

§ 81-7-1. Application and procedure for establishment of branch banks; appeal; judicial review.

(1) Banks may establish branch banks under the restrictions prescribed in this chapter, but no branch bank may be established unless the parent bank shall have first obtained from the commissioner a certificate that the public convenience and necessity will be promoted by the establishment of such branch bank. Applications seeking permission for the establishment of branch banks shall be filed with the commissioner and shall be in such form and contain such information as the commissioner by regulation may require. A separate application shall be filed for each branch bank proposed to be established, and each application shall be accompanied by the fee required by statute, which shall be transferred by the commissioner into the maintenance fund of the Department of Banking and Consumer Finance.

(2) Upon receipt of such application, the commissioner shall immediately give written notice of the filing of said application to all banks having their domicile or a branch bank or branch office in the county in which the applicant bank maintains its principal office, together with all banks, branch banks or branch offices located in the county in which the proposed branch bank is to be located, and to such other banks and interested parties that, in the opinion of the commissioner, may have an interest in the application; and the commissioner shall also at the same time publish such notice once in a newspaper having a general circulation in the county in which the proposed branch bank is to be located. Any interested party may file a written protest to said application with the commissioner within thirty (30) days from the date of the mailing and publishing of said notice. Any protest shall specify the interest of the protestant in the application and state the grounds for the protest.

(3) If no protest is filed within the time prescribed, the commissioner shall investigate the facts and render a final decision within sixty (60) days after

receipt of the application as to whether the public convenience and necessity requires the establishment of the proposed branch bank, said decision to be based upon the results of the commissioner's investigation, the contents of the application and any additional evidence which the commissioner may request the applicant to furnish. If his decision is favorable to the applicant, he shall immediately grant the applicant a certificate to establish and operate the branch bank. If the commissioner's decision shall be unfavorable to the applicant, he shall immediately furnish the applicant bank a copy of his final decision.

Appeals from an unfavorable final decision may be taken by the applicant bank to the State Board of Banking Review by filing a notice of appeal with the commissioner within ten (10) days after the commissioner has rendered his final decision. The commissioner shall inform the board of such appeal, and the board shall hold a hearing on the matter within sixty (60) days after such notice is filed. At the hearing the board shall consider the findings and decision of the commissioner, shall hear such oral testimony as the commissioner may wish to give and shall also receive information and testimony from the applicant bank. The board may also consider such other information and evidence as it deems necessary to dispose of the application. The board shall render a decision within sixty (60) days after the conclusion of the final hearing on the matter. If the board's decision is favorable to the applicant, the commissioner shall immediately grant to the applicant a certificate to establish and operate the branch bank. If the board's decision is unfavorable to the applicant, the commissioner shall immediately furnish the applicant a copy of the board's final decision.

Appeals from an unfavorable board decision may be taken by the applicant bank within ten (10) days from the date of the board's order to the chancery court of the county in which the proposed branch bank is to be located. Except as otherwise provided herein, appeals by an applicant bank from the State Board of Banking Review to a chancery court shall be taken in the manner set forth in Section 81-3-13(2), which governs appeals from the State Board of Banking Review in regard to the incorporation of a new bank.

(4) If a protest to an application to establish a branch bank is received by the commissioner within the prescribed time, he shall investigate the facts and submit said application, the results of his investigation, and his recommendations as to the disposition of said application to the State Board of Banking Review within sixty (60) days after receipt of the application. The board shall hold a hearing on the matter within one hundred twenty (120) days after the application is received and render a final decision thereon within sixty (60) days after the conclusion of the final board hearing. Except as otherwise provided herein, the board shall conduct its proceedings in accordance with Section 81-3-13(1), which prescribes the procedures for actions by the board on applications to establish new banks.

Appeals from any final decision of the State Board of Banking Review acting upon a contested application may be taken by the applicant or any interested organization, person or persons who have participated in the proceeding and feel aggrieved by such decision. Such appeals shall be taken within ten (10) days from the date of the board's order to the chancery court of the county in which the proposed branch bank is to be located. Except as otherwise provided herein, appeals from the State Board of Banking Review to a chancery court shall be taken in the manner set forth in Section 81-3-13(2), which governs appeals from the State Board of Banking Review in regard to the incorporation of a new bank.

(5) Notwithstanding the foregoing and any other provision of law to the contrary, if a branch bank has not been established and is not in operation within two (2) years from the date of the certificate approving such branch bank or within two (2) years from the date upon which any appellate litigation with respect to such certificate has been concluded, the certificate shall expire. Provided, however, the State Board of Banking Review may extend for good cause shown said two-year period a maximum number of two (2) times for periods not exceeding six (6) months each. This provision shall in no way affect certificates issued prior to March 21, 1980.

(6) Notwithstanding the foregoing and any other provision of law to the contrary, the commissioner may grant by regulation eligible banks, as defined in Section 81-3-1, certain preferences with respect to new branch activity which may include but are not limited to an expedited approval process.

SOURCES: Codes, 1942, § 5226; Laws, 1934, ch. 146; Laws, 1978, ch. 310, § 2, 1980, ch. 312, § 34; Laws, 1986, ch. 469, § 3; Laws, 1997, ch. 542, § 6, eff from and after passage (approved April 10, 1997).

Cross References — Tax assessment of branch banks, see § 27-35-37.

Branch banks under the Uniform Commercial Code, see § 75-4-106.

Branch offices of savings associations, see §§ 81-12-175, 81-12-176.

Department of Banking and Consumer Finance, see §§ 81-1-59 et seq.

Fee for filing application for branch bank, see § 81-1-115.

State-chartered banks having and possessing the rights, powers, privileges, immunities, duties and obligations of a national bank having its principal place of business in this state, irrespective of any conflict with the provisions of this section, see § 81-5-1(9).

Consolidation or merger of banks generally, see § 81-5-85.

Establishment of electronic terminals by banks, see § 81-5-100.

Provisions which conditions de novo establishment of branch banks upon compliance with the requirements of this section, see § 81-7-7.

Applicability of provisions of this chapter to the establishment of branch banks by Mississippi banks which are under the control of non-Mississippi bank holding companies, see § 81-8-7.

JUDICIAL DECISIONS

1. In general.
2. Permission to open branch bank.
3.-10. [Reserved for future use.]
11. Under former § 81-7-5.

1. In general.

It is not the purpose of the Mississippi statute to deter competition or foster monopoly, but to guard the public and public interests against imprudent banking, and if the public need will be served by the establishment of a branch bank, commendable activities in community development by other bankers will not act to defeat its establishment. Grenada Bank v. Watson, 361 F. Supp. 728 (N.D. Miss. 1973), aff'd, 488 F.2d 1056 (5th Cir. 1974), reh'g denied, 490 F.2d 992 (5th Cir. 1974).

2. Permission to open branch bank.

The decision of the comptroller of banks of Mississippi under Code 1942, § 5226 to permit the establishment of a branch bank in an unincorporated community within 100 miles of the parent bank is amply substantiated by the facts and circumstances. First Nat'l Bank v. Camp, 471 F.2d 1322 (5th Cir. 1973).

The granting of permission to open a branch bank does not depend upon a showing that the existing banks are not rendering adequate service to their customers, or that a branch bank will be in a position to render better service to the public than the banks already in existence, but the finding must be that there is a public need for the establishment of the branch bank, or that the public convenience and necessity will be promoted by its establishment. Grenada Bank v. Watson, 361 F. Supp. 728 (N.D. Miss. 1973), aff'd, 488 F.2d 1056 (5th Cir. 1974), reh'g denied, 490 F.2d 992 (5th Cir. 1974).

3.-10. [Reserved for future use.]

11. Under former § 81-7-5.

In considering a national bank's simultaneous applications to relocate its main office and create a branch at its present main office the comptroller of currency could consider branching statutes to test the bank's good faith, but he was neither bound by state laws nor required to ignore them; His decision denying the applications was not capricious, arbitrary, or an abuse of discretion in the light of the facts of the case. First Nat'l Bank v. Camp, 333 F. Supp. 682 (N.D. Miss. 1971), aff'd, 467 F.2d 944 (5th Cir. 1972).

A bank which, after consolidation with two smaller banks each serving communities of less than 3,500 population, maintained branch offices in the towns which the consolidated banks had previously served, could not maintain a bill for an injunction to restrain a second bank located in another city from opening branch offices in the towns. Coahoma Bank & Trust Co. v. Bowen, 218 So. 2d 868 (Miss. 1969).

When a state bank acquired all of the assets and liabilities of two smaller banks and consolidated them with it, the effect was that the charters of the smaller banks were extinguished, and thereafter the surviving bank had no right to carry on a general banking business in the communities of less than 3,500 population where the smaller banks had previously existed. Coahoma Bank & Trust Co. v. Bowen, 218 So. 2d 868 (Miss. 1969).

Where the action of the comptroller of the currency approving the establishment of a branch of a national bank complied with the federal statutory requirement that its establishment must be one which is expressly authorized to state banks by the law of the state, it will not be declared void. Citizens Bank v. Camp, 279 F. Supp. 824 (S.D. Miss. 1967).

The power to permit a bank to establish branch offices in the county in which it is domiciled is not limited to establishment within the corporate boundaries of municipalities. First Nat'l Bank v. Canton Exch. Bank, 247 Miss. 757, 156 So. 2d 580 (1963).

RESEARCH REFERENCES

ALR. What is "branch bank" within statutes regulating establishment of branch banks. 23 A.L.R.3d 683.

Maintenance of computer terminal in retail store for purpose of effecting transfer of funds between financial institution and its depositors as conduct of banking business by store. 73 A.L.R.3d 1282.

Application of requirement that newspaper be locally published for official notice publication. 85 A.L.R.4th 581.

What is a "branch" under 12 USCS § 36(f) which a national banking association may retain, establish, or operate. 52 A.L.R. Fed. 649.

Am Jur. 10 Am. Jur. 2d, Banks and

Financial Institutions §§ 623 et seq., 523.
CJS. 9 C.J.S., Banks and Banking §§ 46, 47.

§ 81-7-3. How branch banks to be named.

The name of all branch banks in this state shall include the name of the parent bank, followed by the name of the municipality in which the branch is domiciled, followed in turn by the word "branch", and such name shall be prominently displayed upon the branch bank premises. Where an established bank is annexed or merged as a branch bank, then the name of the bank so annexed or merged may be retained if followed by appropriate words indicating it as a branch of the parent bank.

SOURCES: Codes, 1942, § 5227; Laws, 1934, ch. 146; Laws, 1954, ch. 166.

Cross References — State-chartered banks having and possessing the rights, powers, privileges, immunities, duties and obligations of a national bank having its principal place of business in this state, irrespective of any conflict with the provisions of this section, see § 81-5-1(9).

Applicability of provisions of this chapter to the establishment of branch banks by Mississippi banks which are under the control of non-Mississippi bank holding companies, see § 81-8-7.

§ 81-7-5. Repealed.

Repealed by Laws, 1986, ch. 469, § 14, eff from and after July 1, 1986.

[Codes, 1942, § 5228; Laws, 1934, ch. 146; 1936, ch. 165; 1942, ch. 261; 1966, ch. 253, § 1; 1980, ch. 312, § 35]

Editor's Note — Former § 81-7-5 related to the establishment of branch banks in certain cities.

§ 81-7-7. Establishment of branch banks de novo or by merger or consolidation.

(1) For purposes of this section and Section 81-7-8, "branch bank de novo" or "branching de novo" refers to a branch established by the opening of a new branch bank and includes a branch bank or branch office acquired from another bank without acquiring substantially all of the assets of the other bank.

(2) Subject to the restrictions contained in Section 81-7-8, a bank may establish:

(a) Branch banks de novo within the applicable radius from the parent bank, as specified in subsection (5) of this section, subject to compliance with the procedures set forth in Section 81-7-1;

(b) Branch banks by the merger or consolidation with, or the purchase of all or substantially all of the assets of, any other bank located in Mississippi; and

(c) Branch banks de novo in accordance with subsection (3) of this section, subject to compliance with the procedures set forth in Section 81-7-1.

Compliance with the procedures set forth in Section 81-7-1 is not required to establish branch banks under paragraph (b) of this subsection.

(3) Subject to the restrictions contained in Section 81-7-8, after the establishment of a branch bank or branch banks outside of the applicable radius from the parent bank (of the surviving bank for branching purposes), as specified in subsection (5) of this section, as a result of a transaction pursuant to subsection (2)(b) of this section, a bank may establish branch banks de novo:

(a) In any county where any such branch bank established under subsection (2)(b) is located; and

(b) If any such branch bank established under subsection (2)(b) is located in a town or city situated in two (2) or more counties, in any of such counties; and

(c) If any such branch bank established under subsection (2)(b) is located in an area designated as a Metropolitan Statistical Area by the United States Office of Management and Budget or any successor designation based upon substantially the same criteria, throughout such area so designated, or if such area is not entirely located in Mississippi then throughout the portion of such area located in Mississippi.

(4) The bank resulting from a merger, consolidation or purchase may retain and operate as branch banks any of the parent offices, branch banks or branch offices of the banks participating in the transaction.

(5) For the purposes of this section, the applicable radius from the parent bank shall be:

(a) One hundred (100) miles, from July 1, 1986, through June 30, 1987;

(b) One hundred fifty (150) miles, from July 1, 1987, through June 30, 1988;

(c) Two hundred (200) miles, from July 1, 1988, through June 30, 1989;

(d) The geographical boundaries of the State of Mississippi, from and after July 1, 1989.

SOURCES: Codes, 1942, § 5229; Laws, 1934, ch. 146; Laws, 1936, ch. 167; Laws, 1985, ch. 324; Laws, 1986, ch. 469, § 1, eff from and after July 1, 1986.

Cross References — State-chartered banks having and possessing the rights, powers, privileges, immunities, duties and obligations of a national bank having its principal place of business in this state, irrespective of any conflict with the provisions of this section, see § 81-5-1(9).

Prohibitions against chain banking systems, see § 81-7-19.

Provision that, prior to approving acquisition of a Mississippi bank or bank holding company by a regional bank holding company, the Commissioner must determine that the acquisition will not result in a violation of this section, see § 81-8-3.

Applicability of provisions of this chapter to the establishment of branch banks by Mississippi banks which are under the control of non-Mississippi bank holding companies, see § 81-8-7.

JUDICIAL DECISIONS

1. In general.
2. Grant or denial of application.

1. In general.

The only territorial limitation on the establishment of a branch bank under Mississippi Code 1942, § 5229 is that it be within a radius of 100 miles from the parent bank. First Nat'l Bank v. Camp, 471 F.2d 1322 (5th Cir. 1973).

2. Grant or denial of application.

In considering a national bank's simultaneous applications to relocate its main office and create a branch at its present main office the comptroller of currency could consider branching statutes to test the bank's good faith, but he was neither bound by state laws nor required to ignore them; His decision denying the applications was not capricious, arbitrary, or an abuse of discretion in the light of the facts of the case. First Nat'l Bank v. Camp, 333 F. Supp. 682 (N.D. Miss. 1971), aff'd, 467 F.2d 944 (5th Cir. 1972).

Where the action of the comptroller of the currency approving the establishment of a branch of a national bank complied with the federal statutory requirement that its establishment must be one which is expressly authorized to state banks by the law of the state, it will not be declared void. Citizens Bank v. Camp, 279 F. Supp. 824 (S.D. Miss. 1967).

RESEARCH REFERENCES

Am Jur. 10 Am. Jur. 2d, Banks and Financial Institutions §§ 191, 192 et seq., 234, 238.

3B Am. Jur. Legal Forms 2d, Banks § 163.

CJS. 9 C.J.S., Banks and Banking § 164.

§ 81-7-8. Restrictions upon establishment of branch banks.

(1) A bank chartered after October 16, 1985, may neither establish a branch by merger, consolidation or purchase as provided in Section 81-7-7(2)(b) nor become a branch as the result of such a transaction, unless such bank has been in continuous operation as a state or federally chartered bank, savings association or savings bank for at least its previous five (5) years of existence. For purposes of the five-year requirement, a bank which has been involved in an interim bank merger shall be deemed to have been in operation from the date it began operation under the original charter. "Interim bank merger" means the technique by which a bank holding company obtains a new bank charter solely for the purpose of merging an existing bank into the bank for which the charter is sought or solely for the purpose of merging the bank for which the charter is sought into an existing bank.

(2) A bank is prohibited from establishing a branch by merger, consolidation or purchase, as provided for in Section 81-7-7(2)(b), if upon such merger, consolidation or purchase the surviving bank and all of its branch banks and branch offices located in Mississippi would have combined deposits which exceed twenty-five percent (25%) of the total deposits of all offices located in Mississippi of commercial banks, savings banks, savings and loan associations and credit unions. Determination of the percentage of total deposit concentration limited by this subsection shall be made based on data contained in the most recent call reports or reports of condition furnished immediately prior to

the merger, consolidation or purchase to the appropriate regulatory officials by the banks involved in the merger, consolidation or purchase. "Appropriate regulatory officials" means, for any national bank in Mississippi, the Comptroller of the Currency of the United States or the Board of Governors of the Federal Reserve System of the United States; "appropriate regulatory officials" means, for any state-chartered bank in Mississippi, the Commissioner of Banking and Consumer Finance. In determining total deposits of all offices located in Mississippi of commercial banks, savings banks, savings and loan associations and credit unions, data shall be used as furnished by the Department of Banking and Consumer Finance as of the most recent calendar quarter for which complete data are available. For the purpose of furnishing such data, the department shall obtain from appropriate federal regulatory agencies the most recent data available regarding the deposits of federally chartered institutions. For purposes of this subsection and subsection (4) of this section, "deposits" mean all individual, partnership, corporate and government deposits (including, without limitation, all demand, savings, time, certificates of deposit and other similar depository accounts of individuals, partnerships, corporations and governmental bodies).

(3) In the sale of any insolvent bank made pursuant to the provisions of Chapter 9, Title 81, Mississippi Code of 1972, or pursuant to federal banking laws, the restrictions contained in subsections (1) and (2) of this section shall not apply to prevent the acquisition of such insolvent bank by another bank; and, additionally, neither restriction shall apply to prohibit any purchasing bank from retaining any established branches of the insolvent bank which the purchasing bank would otherwise be prohibited from establishing.

(4) For branching purposes, a parent bank is considered to be located where it was domiciled on June 30, 1986. For any bank opening for business after that date, a parent bank shall be considered for branching purposes to be located where it is first domiciled. Upon a merger, consolidation or purchase as provided for in Section 81-7-7(2)(b), the parent bank for branching purposes of the surviving bank shall be considered to be at the location of the parent bank for branching purposes of the bank involved in such transaction which had the greater amount of deposits based on data contained in the most recent call reports or reports of condition furnished immediately prior to the merger, consolidation or purchase to the appropriate regulatory officials referred to in subsection (2) of this section.

(5) In order for a parent bank to establish a branch bank through de novo branching, merger, consolidation or purchase after June 30, 1986, the parent bank shall have prior to the approval of any such branch application, and shall be expected to maintain, primary capital and total capital ratios equal to or above the minimum acceptable ratios established by the federal bank regulatory agency which primarily regulates and examines such bank. The components of capital and the method of computing the capital ratios shall be those defined by the applicable federal bank regulatory agency.

SOURCES: Laws, 1986, ch. 469, § 2; Laws, 1994, ch. 622, § 158; Laws, 1995, ch. 308, § 7; Laws, 1995, ch. 304, § 1; Laws, 1997, ch. 542, § 7, eff from and after passage (approved April 10, 1997).

Cross References — Commissioner of Banking and Consumer Finance, see § 81-1-61.

State-chartered banks having and possessing the rights, powers, privileges, immunities, duties and obligations of a national bank having its principal place of business in this state, irrespective of any conflict with the provisions of this section, see § 81-5-1(9).

Provision that, subject to subsections (2), (3), and (4) of this section, a bank may annex branch banks by exchanging its shares for shares or assets of banks to be annexed, see § 81-7-11.

Provision that, prior to approving acquisition of a Mississippi bank or bank holding company by a regional bank holding company, the Commissioner must determine that the acquisition will not result in a violation of this section, see § 81-8-3.

Applicability of provisions of this chapter to the establishment of branch banks by Mississippi banks which are under the control of non-Mississippi bank holding companies, see § 81-8-7.

Federal Aspects — Comptroller of the Currency of the United States, see 12 USCS §§ 1 et seq.

Board of Governors of the Federal Reserve System, see 12 USCS §§ 241 et seq.

§ 81-7-9. Capital requirements for branch banking system.

All parent banks permitted to establish branch banks shall have capital sufficient to meet the requirements of the commissioner and/or other supervising federal regulatory agencies.

SOURCES: Codes, 1942, § 5230; Laws, 1934, ch. 146; Laws, 1994, ch. 320, § 9, eff from and after July 1, 1994.

Cross References — State-chartered banks having and possessing the rights, powers, privileges, immunities, duties and obligations of a national bank having its principal place of business in this state, irrespective of any conflict with the provisions of this section, see § 81-5-1(9).

Applicability of provisions of this chapter to the establishment of branch banks by Mississippi banks which are under the control of non-Mississippi bank holding companies, see § 81-8-7.

§ 81-7-11. Issues of stock for annexation of branches.

Subject to the provisions of subsections (2), (3) and (4) of Section 81-7-8, a bank may annex actively operating unit banks as branch banks by exchanging its own increase of common or preferred capital shares, issued for such annexation purpose, for the capital shares of the bank proposed to be annexed as a branch. Also a bank may annex branch banks by issuing additional common or preferred shares to be exchanged for the assets of closed banks, including assets other than cash. All transactions authorized by this section shall first be submitted in writing in full detail to the commissioner, and shall not be effective until he shall have made a careful analysis and investigation of the soundness of the proposed transaction, and shall have approved the same in writing. In no instance, however, shall the bank building and fixtures of the operating or closed bank, proposed to be annexed as a branch bank, represent in value more than one-third (⅓) of the amount of stock issued by the parent bank for the purpose of such annexation. For purposes of applying the restrictions of subsections (2) and (3) of Section 81-7-8, the annexation of an actively operating unit bank described herein shall be considered the establishment of a branch by merger.

SOURCES: Codes, 1942, § 5231; Laws, 1934, ch. 146; Laws, 1986, ch. 469, § 4, eff from and after July 1, 1986.

Cross References — State-chartered banks having and possessing the rights, powers, privileges, immunities, duties and obligations of a national bank having its principal place of business in this state, irrespective of any conflict with the provisions of this section, see § 81-5-1(9).

Applicability of provisions of this chapter to the establishment of branch banks by Mississippi banks which are under the control of non-Mississippi bank holding companies, see § 81-8-7.

§ 81-7-13. Discontinuance and removal of branch banks.

No branch bank in this state may be discontinued or abandoned without the consent in writing of the commissioner first obtained. By and with such consent first obtained, branch banks may be moved from one municipality to another within the restrictions provided in this chapter as to branching de novo. Any established unit bank (branch banks not included) may move from one municipality to a larger municipality, according to the latest federal census, within the county of its domicile, with the written consent and approval of the commissioner. However, any proposed movement of an established unit bank shall be subject to each and every restriction applicable to the location of branch banks as provided in this chapter, and, before giving any such consent and approval, the commissioner shall give to each bank in the county ten (10) days' notice in writing of the application of any bank to move its domicile.

SOURCES: Codes, 1942, § 5232; Laws, 1934, ch. 146; Laws, 1936, ch. 165; Laws, 1986, ch. 469, § 5, eff from and after July 1, 1986.

Cross References — State-chartered banks having and possessing the rights, powers, privileges, immunities, duties and obligations of a national bank having its principal place of business in this state, irrespective of any conflict with the provisions of this section, see § 81-5-1(9).

Applicability of provisions of this chapter to the establishment of branch banks by Mississippi banks which are under the control of non-Mississippi bank holding companies, see § 81-8-7.

§ 81-7-15. Examination of branch banks.

The state comptroller shall formulate rules and regulations for the examination of branch bank systems, including provisions for the simultaneous examination of a parent bank and all of its branches, and such rules and regulations when reduced to writing shall be enforced by him as other provisions of the Mississippi Banking Law.

SOURCES: Codes, 1942, § 5233; Laws, 1934, ch. 146.

Editor's Note — Section 81-1-57 provides that wherever the words "state comptroller" or "comptroller", when referring to the office of state comptroller of banks, shall be construed to mean the commissioner of banking and consumer finance.

Section 81-1-117 abolished the office of state comptroller, and provided that the functions, duties and responsibilities would be assumed by the commissioner of banking and consumer finance.

Cross References — State-chartered banks having and possessing the rights, powers, privileges, immunities, duties and obligations of a national bank having its principal place of business in this state, irrespective of any conflict with the provisions of this section, see § 81-5-1(9).

Applicability of provisions of this chapter to the establishment of branch banks by Mississippi banks which are under the control of non-Mississippi bank holding companies, see § 81-8-7.

§ 81-7-17. National banks may establish branches.

National banks are hereby granted the right and authority to establish branches in this state, with the same rights and under the same restrictions as state banks establishing branches. But where federal statutes and regulations impose different restrictions, including minimum capital stock requirements, from those imposed by this state, then such federal restrictions may apply to such national banks instead of those of this state.

SOURCES: Codes, 1942, § 5234; Laws, 1934, ch. 146.

Cross References — State-chartered banks having and possessing the rights, powers, privileges, immunities, duties and obligations of a national bank having its principal place of business in this state, irrespective of any conflict with the provisions of this section, see § 81-5-1(9).

Applicability of provisions of this chapter to the establishment of branch banks by Mississippi banks which are under the control of non-Mississippi bank holding companies, see § 81-8-7.

RESEARCH REFERENCES

Am Jur. 10 Am. Jur. 2d, Banks and Financial Institutions § 523.

§ 81-7-19. Operation of multibank holding companies permitted; definitions; restrictions; divestment; enforcement.

(1) As used in this section, unless the context otherwise requires:

(a) "Appropriate regulatory officials" means, for any national bank in Mississippi, the Comptroller of the Currency of the United States; "appropriate regulatory officials" means, for any state bank in Mississippi, the

Commissioner of Banking and Consumer Finance or the Federal Deposit Insurance Corporation or the Board of Governors of the Federal Reserve System of the United States.

(b) "Bank" means any person chartered to do a banking business subject to the laws of this or any other jurisdiction.

(c) "Bank holding company" means any person which is required to register as a bank holding company with the Board of Governors of the Federal Reserve System under the federal Bank Holding Company Act of 1956, as amended.

(d) "Person" means an individual, corporation, firm, trust, estate, partnership, joint venture or association.

(e) "Interim bank merger" means the technique by which a bank holding company obtains a new bank charter solely for the purpose of merging an existing bank into the bank for which the charter is sought or solely for the purpose of merging the bank for which the charter is sought into an existing bank.

(f) "Control" means the direct or indirect ownership of five percent (5%) or more of any class of voting securities of a bank.

(2) A bank holding company acting directly or indirectly may not acquire any of the shares of any bank in Mississippi unless such bank has been in operation for at least five (5) years, except in the following instances:

(a) The acquisition of shares of a bank by a bank holding company which before the acquisition owned more than fifty percent (50%) of the shares of the bank;

(b) An interim bank merger for the purpose of acquiring a bank which has been in operation for at least five (5) years;

(c) The acquisition by a bank affiliated with a bank holding company of stock which has been given as collateral security to the bank upon a loan contracted in good faith where the acquisition is necessary to prevent loss upon such loan and the making of the loan and the acquisition of such stock are in the ordinary course of business and not as a means of circumventing this section; however, the stock so purchased or acquired shall be sold or disposed of by the bank at public or private sale within a period of one (1) year from the acquisition thereof, unless the Commissioner of Banking and Consumer Finance extends such period because he deems that an additional period or periods are required to permit the disposition of such stock without undue risk or loss;

(d) The acquisition of an insolvent bank where the sale is made pursuant to the provisions of Chapter 9, Title 81, Mississippi Code of 1972, or pursuant to federal banking laws, or the acquisition of a bridge bank pursuant to federal banking laws;

(e) The acquisition of shares in any bank by another bank acting solely in a fiduciary capacity in the ordinary course of its trust business and not for the purpose of circumventing this section; and

(f) The acquisition of shares of a bank by a person which will become a bank holding company solely by reason of such acquisition.

(3) A bank holding company must divest itself of stock in a bank in Mississippi if, upon acquiring directly or indirectly twenty-five percent (25%) or more of any class of voting securities of such bank, the bank holding company fails within six (6) months after such acquisition to acquire stock sufficient to lawfully vote a merger of the banks or bank holding companies involved in the transaction, even though such merger is not required; however, such acquiring bank holding company may retain ownership of less than twenty-five percent (25%) of any class of voting securities of such bank. The six-month time period provided herein may be extended, upon a showing of reasonable cause therefor, by the Commissioner of Banking and Consumer Finance. This subsection (3) shall not apply to a bank holding company which has lawfully acquired, or has an application pending to acquire, five percent (5%) or more of any class of voting securities of a bank prior to October 1, 1989, with respect to the stock of that particular bank.

(4) A bank holding company is prohibited from acquiring, directly or indirectly, ownership of stock of a bank in Mississippi if the effect of such acquisition of stock is that the acquiring bank holding company would control, directly or indirectly, banks in Mississippi having in the aggregate more than twenty-five percent (25%) of the total deposits of all offices located in Mississippi of commercial banks, savings banks, savings and loan associations, and credit unions. Determination of the percentage of total deposit concentration limited by this subsection shall be made based on data contained in the most recent call reports furnished immediately before the acquisition of stock of such bank to the appropriate regulatory officials by the banks involved in the transaction. In determining total deposits of all offices located in Mississippi of commercial banks, savings banks, savings and loan associations and credit unions, data shall be used as furnished by the Department o f Banking and Consumer Finance as of the most recent calendar quarter for which complete data are available. For the purpose of furnishing such data, the department shall obtain from appropriate federal regulatory agencies the most recent data available regarding the deposits of federally chartered institutions. For purposes of this subsection, "deposits" means all individual, partnership, corporate and government deposits (including, without limitation, all demand, savings, time, certificates of deposit and other similar depository accounts of individuals, partnerships, corporations and governmental bodies). The restriction contained in this subsection shall not apply to prohibit transactions described in subsection (2)(c), (d), (e) and (f).

(5) The Commissioner of Banking and Consumer Finance shall have the power to enforce the prohibitions of this section by seeking to enjoin any violation, by issuing cease and desist orders, by imposing administrative fines or penalties, and by any other remedies that are provided by law.

(6) An out-of-state bank holding company, as defined in Section 81-8-1, shall comply with Chapter 8, Title 81, Mississippi Code of 1972, and this section.

(7) For purposes of this section, the acquisition of shares of a bank holding company shall be considered the indirect acquisition of shares of the bank or banks controlled by such bank holding company.

SOURCES: Codes, 1942, § 5235; Laws, 1934, ch. 146; Laws, 1986, ch. 469, § 6; Laws, 1987, ch. 416; Laws, 1990, ch. 302, § 1; Laws, 1994, ch. 622, § 159; Laws, 1995, ch. 304, § 2; Laws, 2001, ch. 401, § 1, eff from and after July 1, 2001.

Cross References — Commissioner of Banking and Consumer Finance, see § 81-1-61.

State-chartered banks having and possessing the rights, powers, privileges, immunities, duties and obligations of a national bank having its principal place of business in this state, irrespective of any conflict with the provisions of this section, see § 81-5-1(9).

Provision that, prior to approving acquisition of a Mississippi bank or bank holding company by a regional bank holding company, the Commissioner must determine that the acquisition will not result in a violation of this section, see § 81-8-3.

Applicability of provisions of this chapter to the establishment of branch banks by Mississippi banks which are under the control of non-Mississippi bank holding companies, see § 81-8-7.

Federal Aspects — Federal Bank Holding Act of 1956 is codified as 12 USCS § 1841 et seq.

JUDICIAL DECISIONS

1. In general.

Bankholding company's application to acquire shares and debentures of bank did not violate statute prohibiting group banking since terms of agreement which gave applicant right to name two directors to board of bank power to provide bank with policy and operations advice, did not give applicant type of control over bank that would make applicant prohibited group banking system under statute. Bancorp of Mississippi, Inc., 72 F.R.D. 257 (1986).

§ 81-7-21. Certain branches not affected.

None of the provisions of Sections 81-7-1, 81-7-3, 81-7-7 and 81-7-9 of this chapter shall be mandatory on branch banks heretofore established and in operation on April 2, 1934, nor on the parent bank of such branch banks so far as such branch banks are concerned, but such parent and branch banks shall continue to operate under the laws in effect immediately preceding the enactment of this chapter, so far as such branch banks already established are concerned. However, when any parent bank now in existence shall hereafter establish a branch bank, it shall so far as such branch banks hereafter established are concerned, comply with this chapter in all respects.

SOURCES: Codes, 1942, § 5236; Laws, 1934, ch. 146.

Cross References — State-chartered banks having and possessing the rights, powers, privileges, immunities, duties and obligations of a national bank having its principal place of business in this state, irrespective of any conflict with the provisions of this section, see § 81-5-1(9).

Applicability of provisions of this chapter to the establishment of branch banks by Mississippi banks which are under the control of non-Mississippi bank holding companies, see § 81-8-7.

§ 81-7-23. Application of chapter.

The provisions of this chapter apply to branching within the State of Mississippi by:

(a) Banks chartered by the State of Mississippi or national banks having their headquarters in the State of Mississippi, and

(b) Out-of-state banks which maintain a branch in the State of Mississippi subsequent to an interstate branching transaction pursuant to Chapter 23, Title 81, Mississippi Code of 1972, known as the "Interstate Bank Branching Act."

SOURCES: Laws, 1996, ch. 441, § 15, eff from and after May 1, 1997.

CHAPTER 8

Regional Banking Institutions

Sec.
81-8-1. Definitions.
81-8-3. Acquisition of Mississippi bank or bank holding company by out-of-state bank holding company; approval by commissioner.
81-8-5. Repealed.
81-8-7. Applicability of state laws and rules and regulations of state agencies.
81-8-9. Cooperative agreements between department and other bank regulatory agencies.
81-8-11. Construction of chapter.

§ 81-8-1. Definitions.

For the purposes of this chapter, the following words shall have the following meanings:

(a) The term "acquire" means:

(i) The merger or consolidation of one bank holding company with another;

(ii) The acquisition by a bank holding company of the direct or indirect ownership or control of voting shares of a bank or of another bank holding company if, after such acquisition, such bank holding company will directly or indirectly own or control more than five percent (5%) of any class of voting shares of such bank holding company or bank;

(iii) The direct or indirect acquisition by a bank holding company of all or substantially all of the assets of a bank or of another bank holding company; or

(iv) Any other action that would result in the direct or indirect control by a bank holding company of a bank or of another bank holding company.

(b) "Bank" means any "insured bank" as such term is defined in Section 3(h) of the Federal Deposit Insurance Act, 12 USCS Section 1813(h), or any institution eligible to become an insured bank as such term is defined therein, which, in either event:

(i) Accepts deposits that the depositor has a legal right to withdraw on demand; and

(ii) Engages in the business of making commercial loans.

(c) "Banker's bank" has the same meaning as the term is defined in 12 USCS Section 24.

(d) "Banking office" means any bank, branch of a bank, or any other office at which a bank accepts deposits; however, the term "banking office" shall not include:

(i) Unmanned automatic teller machines, point of sale terminals, or other similar unmanned electronic banking facilities at which deposits may be accepted;

(ii) Offices located outside the United States; or

(iii) Loan production offices, representative offices or other offices at which deposits are not accepted.

(e) "Bank holding company" means any company which is a bank holding company under the federal Bank Holding Company Act of 1956, as amended, 12 USCS Section 1841(a)(1).

(f) "Commissioner" means the Commissioner of Banking and Consumer Finance as provided for in Section 81-1-61.

(g) "Control" has the meaning set forth in Section 2(a)(2) of the federal Bank Holding Company Act of 1956, as amended, 12 USCS Section 1841(a)(2).

(h) "Department" means the Mississippi Department of Banking and Consumer Finance established in Section 81-1-59.

(i) "Deposits" means all demand, time and savings deposits, without regard to the location of the depositor; provided, however, that "deposits" shall not include any deposits by banks. For purposes of this chapter, determinations of deposits shall be made by reference to regulatory reports of condition or similar reports made by or to state and federal regulatory agencies.

(j) "Mississippi bank" means a bank organized under the laws of this state, or a bank organized under the laws of the United States which has its main office in Mississippi.

(k) "Mississippi bank holding company" means a bank holding company in which the total Mississippi deposits of all bank subsidiaries of such company exceed the total deposits of such bank subsidiaries in any other state.

(*l*) The "principal place of business" of a bank holding company is the state in which the total deposits of the bank subsidiaries of the bank holding company are the largest, or the state designated by the bank holding company.

(m) "Out-of-state bank holding company" means a bank holding company other than a Mississippi bank holding company.

(n) "Subsidiary" means that which is set forth in Section 2(d) of the federal Bank Holding Company Act of 1956, as amended, 12 USCS Section 1841(d).

SOURCES: Laws, 1986, ch. 469, § 8; Laws, 1995, ch. 304, § 3; Laws, 2000, ch. 325, § 1, eff from and after July 1, 2000.

Cross References — Authorization for multibank holding company to operate in state, see § 81-7-19.

Federal Aspects — Provisions of Section 3(h) of the Federal Deposit Insurance Act, see 12 USCS § 1813(h).

Sections 2(a)(1), 2(a)(2), and 2(d) of the federal Bank Holding Company Act of 1956, see 12 USCS §§ 1841(a)(1), (2), (d), respectively.

Provision of International Banking Act defining "foreign bank," see 12 USCS § 3101(7).

§ 81-8-3. Acquisition of Mississippi bank or bank holding company by out-of-state bank holding company; approval by commissioner.

(1) An out-of-state bank holding company may establish a bank in Mississippi only by acquiring a Mississippi bank or Mississippi bank holding company upon approval by the commissioner, which approval:

(a) Determines that the Mississippi bank sought to be acquired has been in existence and continuously operating for more than five (5) years or that the Mississippi bank subsidiary of the Mississippi bank holding company sought to be acquired has been in existence and continuously operating for more than five (5) years;

(b) Determines that the acquisition will not result in a violation of Sections 81-5-28, 81-7-7, 81-7-8 and 81-7-19.

(c) Determines that a copy of the completed application or applications which are filed with the appropriate federal bank regulatory authority seeking approval of the acquisition, and a consent to service of process (all on such form or forms as the commissioner by regulation may require) shall have been filed with the commissioner for at least sixty (60) days, and notice of such acquisition, specifying the name of the out-of-state bank holding company, the name of the Mississippi bank or Mississippi bank holding company sought to be acquired and a brief description of the transaction shall have been published once in a newspaper of general circulation in each county in which the Mississippi bank or the subsidiary of the Mississippi bank holding company has banking offices.

(2) Nothing in this section shall prohibit the acquisition by an out-of-state bank holding company of all or substantially all of the shares of (a) a bank organized solely for the purpose of facilitating the acquisition of a bank which has been in existence and continuously operated as a bank for more than five (5) years, or (b) a banker's bank that has been in existence less than five (5) years, if the acquisition has otherwise been approved pursuant to this section. However, any state or federally chartered banker's bank that is acquired by an out-of-state bank holding company as provided in this subsection shall remain a banker's bank for a period of not less than five (5) years after the date of acquisition.

(3) Notwithstanding the foregoing or any other provision of this chapter to the contrary, a Mississippi bank may enter into an interstate branching transaction as defined by and pursuant to Chapter 23, Title 81, Mississippi Code of 1972, known as the Interstate Bank Branching Act.

SOURCES: Laws, 1986, ch. 469, § 9; Laws, 1995, ch. 304, § 4; Laws, 1996, ch. 441, § 16; Laws, 2000, ch. 325, § 2, eff from and after July 1, 2000.

Cross References — State-chartered banks having and possessing the rights, powers, privileges, immunities, duties and obligations of a national bank having its principal place of business in this state, irrespective of any conflict with the provisions of this section, see § 81-5-1(9).

Authorization for multibank holding company to operate in state, see § 81-7-19.

RESEARCH REFERENCES

ALR. Construction and application of "grandfather proviso" of § 4(a)(2) of Bank Holding Company Act (12 USCS § 1843(a)(2)). 35 A.L.R. Fed. 942.

Who is "party aggrieved" under § 9 of Bank Holding Company Act (12 USCS § 1848), which allows any party aggrieved by Federal Reserve Board order under Act to obtain judicial review. 36 A.L.R. Fed. 349.

Construction and application of Bank Holding Company Act provision that application for approval to acquire control of bank shall be deemed granted if Federal Reserve Board does not act on application within 91 days (12 USCS § 1842(b)). 38 A.L.R. Fed. 919.

Jurisdiction of United States Courts of Appeals to review agency action under § 9 of Bank Holding Company Act (12 USCS § 1848). 40 A.L.R. Fed. 593.

Denial by Board of Governors of Federal Reserve System of application for bank merger, consolidation, or acquisition on anticompetitive grounds under § 3(c) of Bank Holding Company Act of 1956 (12 USCS § 1842(c)). 71 A.L.R. Fed. 438.

What constitutes violation of provisions of Bank Holding Company Act prohibiting tying arrangements (12 USCS § 1972(1)). 74 A.L.R. Fed. 578.

Am Jur. 10 Am. Jur. 2d, Banks and Financial Institutions §§ 19 et seq., 85 et seq., 176 et seq., 1192, 1194.

3B Am. Jur. Legal Forms 2d, Banks §§ 38:86 et seq.

CJS. 9 C.J.S., Banks and Banking §§ 5-47.

§ 81-8-5. Repealed.

Repealed by Laws, 1995, ch. 304, § 8, eff from and after the effective date of Section 101 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, Public Law 103-328 (effective at the end of the 1 year period beginning on the date of enactment, September 29, 1994).

[Laws, 1986, ch. 469, § 10]

Editor's Note — Former § 81-8-5 was entitled: Prohibition against acquisition or ownership of Mississippi bank or bank holding company by nonqualifying entities; enforcement.

§ 81-8-7. Applicability of state laws and rules and regulations of state agencies.

Any bank holding company which controls a Mississippi bank or a Mississippi bank holding company shall be subject to such laws of this state and such rules of its agencies relating to the acquisition, ownership and operation of banks and bank holding companies as are applicable to Mississippi bank holding companies. Any Mississippi bank which is controlled by a bank holding company that is not a Mississippi bank holding company shall be subject to all laws of this state and rules and regulations of its agencies relating to the acquisition, ownership, operation and regulation of banks and their branches as are applicable to Mississippi banks which are not controlled by such non-Mississippi bank holding companies and may establish branches pursuant to Chapter 7 of this title.

SOURCES: Laws, 1986, ch. 469, § 11; brought forward, Laws, 1995, ch. 304, § 5, eff from and after the effective date of Section 101 of the Riegle-Neal

Interstate Banking and Branching Efficiency Act of 1994, Public Law 103-328 (effective at the end of the 1 year period beginning on the date of enactment, September 29, 1994).

Cross References — State-chartered banks having and possessing the rights, powers, privileges, immunities, duties and obligations of a national bank having its principal place of business in this state, irrespective of any conflict with the provisions of this section, see § 81-5-1(9).

RESEARCH REFERENCES

ALR. Construction and application of "grandfather proviso" of § 4(a)(2) of Bank Holding Company Act (12 USCS § 1843(a)(2)). 35 A.L.R. Fed. 942.

Who is "party aggrieved" under § 9 of Bank Holding Company Act (12 USCS § 1848), which allows any party aggrieved by Federal Reserve Board order under Act to obtain judicial review. 36 A.L.R. Fed. 349.

Construction and application of Bank Holding Company Act provision that application for approval to acquire control of bank shall be deemed granted if Federal Reserve Board does not act on application within 91 days (12 USCS § 1842(b)). 38 A.L.R. Fed. 919.

Jurisdiction of United States Courts of Appeals to review agency action under § 9 of Bank Holding Company Act (12 USCS § 1848). 40 A.L.R. Fed. 593.

Denial by Board of Governors of Federal Reserve System of application for bank merger, consolidation, or acquisition on anticompetitive grounds under § 3(c) of Bank Holding Company Act of 1956 (12 USCS § 1842(c)). 71 A.L.R. Fed. 438.

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Am Jur. 10 Am. Jur. 2d, Banks and Financial Institutions §§ 19 et seq., 85 et seq., 176 et seq., 1192, 1194.

3B Am. Jur. Legal Forms 2d, Banks §§ 38:86 et seq.

CJS. 9 C.J.S., Banks and Banking §§ 5-47.

§ 81-8-9. Cooperative agreements between department and other bank regulatory agencies.

The department is authorized to enter into cooperative agreements with other bank regulatory agencies to facilitate the regulation of banks and bank holding companies doing business in this state. The department may accept reports of examinations and other records from such other agencies in lieu of conducting its own examinations of banks controlled by bank holding companies with their principal places of business in other states. The department may take any action jointly with other regulatory agencies having concurrent jurisdiction over banks and bank holding companies doing business in this state or may take such actions independently in order to carry out its responsibilities.

SOURCES: Laws, 1986, ch. 469, § 12; brought forward, Laws, 1995, ch. 304, § 6, eff from and after the effective date of Section 101 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, Public Law 103-328 (effective at the end of the 1 year period beginning on the date of enactment, September 29, 1994).

Cross References — State-chartered banks having and possessing the rights, powers, privileges, immunities, duties and obligations of a national bank having its principal place of business in this state, irrespective of any conflict with the provisions of this section, see § 81-5-1(9).

RESEARCH REFERENCES

Am Jur. 10 Am. Jur. 2d, Banks and Financial Institutions §§ 19 et seq., 85 et seq., 176 et seq., 1192, 1194.

3B Am. Jur. Legal Forms 2d, Banks §§ 38:86 et seq.

CJS. 9 C.J.S., Banks and Banking §§ 5-47 et seq.

§ 81-8-11. Construction of chapter.

It is the purpose of this chapter to permit orderly development of banking institutions on a national basis in accordance with the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, Public Law 103-328. It is not the purpose of this chapter to authorize interstate banking on any basis other than as expressly provided in this chapter and by federal law. To that end, if any provision of this chapter pertaining to the terms, conditions and limitations of interstate acquisitions of Mississippi banks and bank holding companies is determined to be inconsistent with or contrary to any provision of federal law, such provision of this chapter shall be null and void with respect to such federal law; however, any transaction which has been lawfully consummated pursuant to this chapter prior to a determination of invalidity shall be unaffected by such determination.

SOURCES: Laws, 1986, ch. 469, § 13; Laws, 1995, ch. 304, § 7, eff from and after the effective date of Section 101 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, Public Law 103-328 (effective at the end of the 1 year period beginning on the date of enactment, September 29, 1994).

Cross References — State-chartered banks having and possessing the rights, powers, privileges, immunities, duties and obligations of a national bank having its principal place of business in this state, irrespective of any conflict with the provisions of this section, see § 81-5-1(9).

RESEARCH REFERENCES

Am Jur. 10 Am. Jur. 2d, Banks and Financial Institutions §§ 19 et seq., 85 et seq., 176 et seq., 1192, 1194.

3B Am. Jur. Legal Forms 2d, Banks §§ 38:86 et seq.

CJS. 9 C.J.S., Banks and Banking §§ 5-47 et seq.

CHAPTER 9

Insolvent Banks

Sec.

81-9-1. Capital stock impaired; how restored.
81-9-3. Transfers by banks and other acts in contemplation of insolvency.
81-9-5. Closing insolvent banks.
81-9-7. Examiner to be placed in charge.
81-9-9. Conservation of assets; title.
81-9-11. Sale of assets of insolvent bank.
81-9-13. Reopening banks under "freezing of deposits" agreements.
81-9-15. Limitation on custodial period; approval of acts involving discretion or judgment.
81-9-17. Receiver to be appointed.
81-9-19. Surrender of assets to receiver; reports.
81-9-21. Bond of receiver.
81-9-23. Duties of receiver.
81-9-25. Receivers empowered to borrow money.
81-9-27. Receivers may sell assets of insolvent banks.
81-9-29. Liquidation; separate assets for creditors; corporate stock.
81-9-31. Proof of claims.
81-9-33. Inventory and books by the receiver.
81-9-35. Dividends by receiver.
81-9-37. Reports by receiver; petition for discharge.
81-9-39. Compensation and expenses of receiver and attorney.
81-9-41. Liquidation of solvent bank.
81-9-43. Procedure to obtain depositors' liquidation.
81-9-45. Petition and decree thereon.
81-9-47. Effect of decree.
81-9-49. General powers of liquidating corporation.
81-9-51. Double liability of certain stockholders released.
81-9-53. Bond of directors; compensation.
81-9-55. Vacancies and removal of directors.
81-9-57. Officers of the corporation.
81-9-59. Compensation of liquidator and other employees.
81-9-61. Exercise of discretion without approval of court.
81-9-63. Sale of assets to going bank.
81-9-65. Corporation and directors may be restrained.
81-9-67. Liquidating corporations may apply to court for directions.
81-9-69. Records and inspection thereof.
81-9-71. Final report and dissolution of the corporation.
81-9-73. When Federal Deposit Insurance Corporation or any similar corporation to be appointed receiver.
81-9-75. Priority of claims for payment against certain insolvent banks upon liquidation or upon execution of purchase of assets and assumption of liabilities.

§ 81-9-1. Capital stock impaired; how restored.

When it shall be brought to the attention of the state comptroller that the capital stock of any bank is impaired to such an extent as to render a further continuance of its business hazardous to its creditors, depositors, or the public, he shall immediately request the stockholders to pay into the bank a sufficient sum to restore the capital or to execute to him, for the use and benefit of all creditors whether then existing or thereafter created, a bond for such sum as may be required to fully restore the capital stock with good and sufficient sureties to be approved by him, conditioned that all just debts and liabilities, whensoever created, shall be paid in full. Such requests on the part of the state comptroller shall not be compulsory, and any stockholder may refuse to accede to such request. If the stockholders shall fail, within a time to be fixed by the state comptroller, to restore the capital stock or to give such bond, the state comptroller shall close such bank and submit the same to the proper chancery court for liquidation as provided in this chapter. However, when the state comptroller finds the capital stock of any bank to some extent impaired, but considers that a further continuance of its business will not be hazardous to its creditors, depositors, or the public, he may grant any such bank a reasonable time, to be determined by the state comptroller, to overcome or restore such impairment. If the impairment is not overcome or restored within the time allowed for this purpose, the state comptroller shall then proceed to deal with any such bank as provided for above.

If stockholders owning one-third (⅓) or more of the total outstanding capital stock of said bank shall refuse to accede to the comptroller's request, as above provided, for additional capital and if the cause of the comptroller's request shall have been in part the result of bad management as evidenced by unsatisfactory loans or investments, then any three (3) or more minority stockholders, representing one-third (⅓) or more of the total outstanding capital and surplus, if any, may petition the state comptroller for liquidation of the bank and, if satisfactory action be not taken by the state comptroller within ten days, as set out in said petition of the minority stockholders, then the said minority stockholders, representing one-third or more of the outstanding capital stock, shall have the right to petition the appropriate chancery court for liquidation of the bank and such other relief as the court may render. In such cases, the examination reports of the department of bank supervision and proper federal supervisory agencies shall be prima facie evidence of the cause to be heard.

SOURCES: Codes, 1942, § 5237; Laws, 1934, ch. 146; Laws, 1936, ch. 165; Laws, 1966, ch. 254, § 1, eff from and after passage (approved May 11, 1966).

Editor's Note — Section 81-1-57 provides that wherever the words "state comptroller" or "comptroller", when referring to the office of state comptroller of banks, shall be construed to mean the commissioner of banking and consumer finance.

Section 81-1-117 abolished the office of state comptroller, and provided that the functions, duties and responsibilities would be assumed by the commissioner of banking and consumer finance.

Cross References — Insolvency and preference under the Uniform Commercial Code, see § 75-4-214.

Annual examination of banks and powers and duties of officer making such examination, see §§ 81-1-81, 81-1-83.

State-chartered banks having and possessing the rights, powers, privileges, immunities, duties and obligations of a national bank having its principal place of business in this state, irrespective of any conflict with the provisions of this section, see § 81-5-1(9).

Depositors' liquidation, see §§ 81-9-43 et seq.

JUDICIAL DECISIONS

1. In general.

Transaction whereby bank superintendent allowed bank to remain open upon deposit of directors' notes to cover loss exceeding capital and surplus on loan held contract between bank and directors and not invalid. Love v. Wilson, 172 Miss. 546, 160 So. 565 (1935).

Officers' and directors' contract to pay all bank's losses, to prevent assessment against stockholders, held not contrary to public policy nor statute; nor did such contract prevent banking department from exercising statutory powers. Love v. Dampeer, 159 Miss. 430, 132 So. 439, 73 A.L.R. 1376 (1931).

RESEARCH REFERENCES

Am Jur. 10 Am. Jur. 2d, Banks and Financial Institutions §§/ 207-213, 1017-1184.

CJS. 9 C.J.S., Banks and Banking §§ 128-204.

§ 81-9-3. Transfers by banks and other acts in contemplation of insolvency.

All transfers of the notes, bonds, bills of exchange, or other evidences of debt owing to any bank, or of deposits to its credit; all assignments of mortgage, securities on real estate, or of judgments or decrees in its favor; all deposits of money, bullion, or other valuable thing for its use, or for the use of any of its shareholders or creditors; and all payments of money to either, made after the commission of an act of insolvency, or in contemplation thereof, with a view to prevent the application of a bank's assets in the manner prescribed by this chapter, or with a view to the preference of one creditor to another, except state deposits, shall be utterly null and void.

SOURCES: Codes, 1942, § 5238; Laws, 1934, ch. 146; Laws, 1969, Ex Sess, ch. 53, § 9, eff from and after December 31, 1969.

Cross References — State-chartered banks having and possessing the rights, powers, privileges, immunities, duties and obligations of a national bank having its principal place of business in this state, irrespective of any conflict with the provisions of this section, see § 81-5-1(9).

Penalty for receiving deposits when bank is insolvent, see § 97-19-47.

RESEARCH REFERENCES

Am Jur. 10 Am. Jur. 2d, Banks and Financial Institutions §§ 1023, 1024.

§ 81-9-5. Closing insolvent banks.

If at any time the state comptroller shall be of the opinion that a bank is insolvent, or that its condition is such that a further continuance of its business is hazardous to its creditors, depositors, or the public, or is unable to meet its obligations in the ordinary course of business, he shall close said bank and proceed as provided in this chapter.

SOURCES: Codes, 1942, § 5240; Laws, 1934, ch. 146.

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Section 81-1-117 abolished the office of state comptroller, and provided that the functions, duties and responsibilities would be assumed by the commissioner of banking and consumer finance.

Cross References — State-chartered banks having and possessing the rights, powers, privileges, immunities, duties and obligations of a national bank having its principal place of business in this state, irrespective of any conflict with the provisions of this section, see § 81-5-1(9).

JUDICIAL DECISIONS

1.-10. [Reserved for future use.]
11. Under former law.

1.-10. [Reserved for future use.]

11. Under former law.

Fees of auditors and a special master, in a bank liquidation proceedings, were properly a part of the taxable costs involving the liquidation, and were entitled to preference upon distribution of the assets. Taylor, Powell & Wilson v. Parker, 193 Miss. 514, 10 So. 2d 192 (1942).

Depositors of insolvent state bank are not entitled to payment of claims as preferred claims, unless claims were preferred before liquidation. Christensen v. Merchants' & Marine Bank, 168 Miss. 43, 150 So. 375 (1933).

Depositors in insolvent state bank, who did not consent to sale of assets to reorganized bank, held not entitled to payment of claims in full, giving them preference over other creditors. Christensen v. Merchants' & Marine Bank, 168 Miss. 43, 150 So. 375 (1933).

State superintendent of banks may sell assets of insolvent bank in bulk at any stage in liquidation. Christensen v. Merchants' & Marine Bank, 168 Miss. 43, 150 So. 375 (1933).

State superintendent of banks need not sell assets of insolvent bank all at one time or at any particular time, but should make such sale as will better promote interests of creditors. Christensen v. Merchants' & Marine Bank, 168 Miss. 43, 150 So. 375 (1933).

Sale of assets of insolvent state bank to reorganized bank need not necessarily be for cash, but may be made partially on credit, or on terms. Christensen v. Merchants' & Marine Bank, 168 Miss. 43, 150 So. 375 (1933).

Liquidation of insolvent state bank should proceed speedily, and assets should be sold for fair and reasonable value. Christensen v. Merchants' & Marine Bank, 168 Miss. 43, 150 So. 375 (1933).

State superintendent of banks must secure approval of chancery court in liquidation proceedings before he can sell assets of insolvent bank. Christensen v. Merchants' & Marine Bank, 168 Miss. 43, 150 So. 375 (1933).

Petitions or other proceedings by depositors or other creditors affecting liquidation of insolvent state bank should be asserted in liquidation proceedings and not in collateral suits. Christensen v. Merchants' & Marine Bank, 168 Miss. 43, 150 So. 375 (1933).

Statutes providing for liquidation of insolvent state bank are remedial, and should receive liberal construction. Christensen v. Merchants' & Marine Bank, 168 Miss. 43, 150 So. 375 (1933).

In absence of special permission from court having jurisdiction of bank liquidation proceeding, creditors cannot, until after completion of such proceeding, maintain separate suits for purpose of securing individual claims or establishing liability of bank directors or superintendent of banks for negligence occurring before closing of bank. Love v. State, 166 Miss. 776, 145 So. 619 (1933).

In bank liquidation proceeding, all equities, liens, and priorities are to be settled by decree of chancery court. Love v. Sunflower County, 165 Miss. 507, 144 So. 856 (1932).

Statute (§ 3817, Code 1930) respecting bank liquidation proceedings vests full jurisdiction of subject-matter in chancery court. Love v. Sunflower County, 165 Miss. 507, 144 So. 856 (1932).

Where insolvent bank was being liquidated, county and city could not maintain separate bill in equity and have subjected specific property of bank to their demand. Love v. Sunflower County, 165 Miss. 507, 144 So. 856 (1932).

General creditors held entitled to participate in distribution of assets of insolvent bank along with depositors. Anderson v. Baskin & Wilbourn, 114 Miss. 81, 74 So. 682 (1917).

Where cashier was in full charge of bank in process of liquidation, his knowledge of transaction with debtor resulting in compromise of bank's claim renders his action binding on bank. Metzger v. Southern Bank, 98 Miss. 108, 54 So. 241 (1910).

§ 81-9-7. Examiner to be placed in charge.

If the Commissioner of Banking and Consumer Finance shall close a bank as provided in this chapter and the assets thereof shall not be promptly sold as provided in Section 81-9-11, he shall immediately place in charge an examiner, whose salary and expenses, including auditing and clerical help, shall be paid out of the assets of the bank and not out of the Department of Banking and Consumer Finance Maintenance Fund.

SOURCES: Codes, 1942, § 5241; Laws, 1934, ch. 146; Laws, 1994, ch. 622, § 160, eff from and after July 1, 1994.

Cross References — State-chartered banks having and possessing the rights, powers, privileges, immunities, duties and obligations of a national bank having its principal place of business in this state, irrespective of any conflict with the provisions of this section, see § 81-5-1(9).

Appointment of Federal Deposit Insurance Corporation as receiver, see § 81-9-73.

Appointment of conservator of credit union, see § 81-13-21.

§ 81-9-9. Conservation of assets; title.

During the period in which such examiner shall be in charge he shall prepare and make a transcript of the books and affairs of the bank, and shall generally conserve the assets of the bank. During such period the legal title to the assets of the bank shall be in the state comptroller, which title shall be generally that of a temporary receiver. The examiner in charge shall be the custodian of the affairs and assets of the bank, for and in behalf of the state comptroller, and shall work under the direction of the state comptroller. The state comptroller shall forthwith file a petition in the chancery court of the county in which the bank is situated, in a cause to be entitled, "In the matter of the custody of (naming bank) by (name of state comptroller), state comptroller." The bank shall be a party respondent to the petition, unless the board of directors, by resolution voted for by a majority thereof, shall have submitted the bank and its affairs to the custody of the state comptroller, and waived service of process on the petition, in which event the hearing on such petition may be ex parte. If no such resolution is passed the chancellor shall order a hearing on such petition at such time to be fixed by him, and shall order issuance of a summons for the bank, returnable at the time so fixed. At the hearing on the petition the chancellor shall confirm the acts of the state comptroller in taking charge of the bank unless good cause be shown for returning the bank to the management of the directors.

SOURCES: Codes, 1942, § 5242; Laws, 1934, ch. 146.

Editor's Note — Section 81-1-57 provides that wherever the words "state comptroller" or "comptroller", when referring to the office of state comptroller of banks, shall be construed to mean the commissioner of banking and consumer finance.

Section 81-1-117 abolished the office of state comptroller, and provided that the functions, duties and responsibilities would be assumed by the commissioner of banking and consumer finance.

Cross References — State-chartered banks having and possessing the rights, powers, privileges, immunities, duties and obligations of a national bank having its principal place of business in this state, irrespective of any conflict with the provisions of this section, see § 81-5-1(9).

Appointment of receiver after ninety days, see § 81-9-17.

§ 81-9-11. Sale of assets of insolvent bank.

After the state comptroller has taken charge of an insolvent bank as herein provided, he shall have power and authority, by and with the consent of the chancery court, or of the chancellor in vacation, to whose jurisdiction the affairs of the insolvent bank have been submitted, (and also of the Federal Deposit Insurance Corporation if the deposits of such bank be to any extent insured by said corporation) to sell the assets of such insolvent bank to any going bank at such price as may be deemed fair and reasonable value for such assets, allowing the purchasing bank to assume all or a certain percentage of the liabilities of the insolvent bank in payment for the assets so sold or taken over by the purchasing bank. Such sale when approved by the chancery court or chancellor shall have the effect of a quit claim of all the right, title and interest of the comptroller and of the insolvent bank in and to the property and assets so sold and transferred. In such cases the title to all assets other than real estate shall pass to the purchasing bank by delivery, and a conveyance of the real estate of the insolvent bank may be made by the comptroller in the form of a deed of conveyance which shall operate as a special warranty deed against the comptroller and the insolvent bank.

SOURCES: Codes, 1942, § 5243; Laws, 1934, ch. 146.

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Section 81-1-117 abolished the office of state comptroller, and provided that the functions, duties and responsibilities would be assumed by the commissioner of banking and consumer finance.

Cross References — Application of territorial and numerical restrictions on establishment of branch banks to purchaser of insolvent bank, see §§ 81-7-7, 81-7-8.

Applicability of time constraints for approval of certificate of incorporation to purchasers of insolvent institutions, see § 81-3-13.

State-chartered banks having and possessing the rights, powers, privileges, immunities, duties and obligations of a national bank having its principal place of business in this state, irrespective of any conflict with the provisions of this section, see § 81-5-1(9).

Authorization for multibank holding company to operate in state, see § 81-7-19.

Sale of assets by receiver, see § 81-9-27.

§ 81-9-13. Reopening banks under "freezing of deposits" agreements.

The comptroller of banks of the State of Mississippi is authorized to reopen any closed bank, with the approval of the chancery court of the county in which the bank is situated, or of the chancellor thereof in vacation, when at least three-fourths of the general depositors and creditors therein holding unsecured deposits, or any number of the general depositors and creditors therein, provided they own at least three-fourths of the unsecured deposits in or claims against such bank, agree to the reopening thereof and sign what is commonly termed a "freezing-of-deposits" agreement, under which they agree to accept repayment of their deposits and claims in deferred installments, for the full amount thereof or in reduced amounts, with or without interest, the period over which the deposits and claims are to be repaid and the rate of payment, together with the interest rate, if any, to be determined by the comptroller of banks, if the comptroller is convinced that such bank as reopened will be in a solvent condition and can repay the depositors and creditors the amounts of their deposits and claims in accordance with the terms of the agreement for the repayment of same.

Before any such bank shall be reopened, the entire plan for the reopening of the same, and all material facts in connection there with, shall be submitted by the comptroller to the chancery court of the county in which the bank is situated, or the chancellor in vacation, by proper petition, duly verified, such petition to contain a statement of the assets and liabilities of the bank and such other information as may be necessary to convey to the court or chancellor the true facts with reference to the condition of such bank, and a decree of the court or chancellor in vacation obtained approving the plan agreed upon and submitted by the comptroller for the reopening of such bank and authorizing the same to be reopened. The hearing of such petition shall be had at such time and place as shall be fixed by the court or chancellor, after ten days' notice is given of such hearing by publication in some newspaper having a general circulation in the county in which the closed bank is located. The filing of a petition by any closed bank submitted to the jurisdiction of the chancery court of the county of its domicile and publishing of notice to creditors as otherwise provided by law shall vest in said court jurisdiction over all of the assets of said bank and of its creditors and empower it to so act hereunder.

When any closed bank has been reopened as herein provided, the general depositors and creditors thereof who have not expressly agreed to accept repayment of their deposits and claims in accordance with the freezing-of-deposits plan shall be bound to accept repayment of their deposits and claims according to the terms of the decree of the court or chancellor in vacation and on the same basis and at the same rate as those general depositors and creditors who have signed the freezing-of-deposits agreement, except that this paragraph shall not apply to deposits of public moneys or to depositors and creditors holding preferred claims, or secured claims, nor to correspondent banks holding bills payable of the closed bank to the extent that same are adequately secured by the collateral held therefor.

Proper provision shall be made in the plan for the reopening of such bank to pay public depositors, depositors, and creditors holding preferred and secured claims and correspondent banks holding bills payable to the extent which they are adequately secured by collateral held, on terms acceptable to them, but any arrangement so made shall not operate prejudicially to the rights of the general depositors and creditors of the bank.

This section shall not be construed to give the comptroller the right to diminish the assets of a closed bank to the prejudice of the depositors and creditors thereof, and any assets that may be charged out as doubtful or as losses and not carried into the reopened bank as an asset, shall be held by the reopened bank in trust for payment pro rata of such parts of the claims of the depositors and creditors as under the decree authorizing the reopening of the bank are provided shall not be a charge against the assets of the reopened bank. The reopened bank shall be accountable to the said chancery court for the proper handling of such assets not taken into the reopened bank and the payment of the proceeds thereof to the creditors entitled thereto; but without restriction upon the public in dealing with the reopened bank relative thereto nor obligation upon the public so dealing to see that such bank properly accounts therefor.

This section is to be liberally construed as an exercise of the police power of the state as a sovereign to legislate with reference to banks as public utilities to promote the public welfare, and shall apply to all closed banks whether heretofore, now or hereafter closed.

SOURCES: Codes, 1942, § 5245; Laws, 1934, ch. 146.

Editor's Note — Section 81-1-57 provides that wherever the words "state comptroller" or "comptroller", when referring to the office of state comptroller of banks, shall be construed to mean the commissioner of banking and consumer finance.

Section 81-1-117 abolished the office of state comptroller, and provided that the functions, duties and responsibilities would be assumed by the commissioner of banking and consumer finance.

Cross References — State-chartered banks having and possessing the rights, powers, privileges, immunities, duties and obligations of a national bank having its

principal place of business in this state, irrespective of any conflict with the provisions of this section, see § 81-5-1(9).

JUDICIAL DECISIONS

1. In general.
2. Disposition of assets and deposits.
3. Process.
4. —Notice by citation.

1. In general.

Previous similar provision (Laws 1932, ch. 251) was held merely to change the method of liquidation, making the resumption of business a means of payment of creditors, and therefore not to impair contractual rights or to annul rights of property in violation of Art. I § 10, or of the Fourteenth Amendment of the Federal Constitution. Doty v. Love, 295 U.S. 64, 55 S. Ct. 558, 79 L. Ed. 1303, 96 A.L.R. 1438 (1935).

Provision of plan for reorganization of closed state bank, pursuant to previous similar statute (Laws 1932, ch. 251), in effect releasing old stockholders who participate in reorganization and advance new capital from part of stockholders' liability, held not invalid as impairing obligation of contract arising with stockholders who took stock in bank, where plan was substantially more beneficial to depositors than continuance of ordinary liquidation, and depositors could not show substantial prejudice. Dunn v. Love, 172 Miss. 342, 155 So. 331, 92 A.L.R. 1323 (1934), aff'd, 295 U.S. 64, 55 S. Ct. 558, 79 L. Ed. 1303, 96 A.L.R. 1438 (1935).

2. Disposition of assets and deposits.

When money of a ward is deposited in a bank under the authorization and direction of the chancery court, pursuant to previous similar provision (Laws 1932, ch. 251, § 2), the minor is bound by the provisions of this section [Code 1942, § 5245] as to funds on deposit; and such funds would be subject to the business risks taken by others in the prudent handling of the bank's business. Dorsey v. Murphy, 188 Miss. 291, 194 So. 603 (1940).

Where under a freezing agreement the bank established a pool of notes for collection to apply on certain frozen deposits, the bank could not collect on such notes and apply the receipt therefrom to its own purposes, since under the agreement collections should be applied to the account of either the frozen deposit or the funds placed in the pool for the depositors whose claims were pooled. Dorsey v. Murphy, 188 Miss. 291, 194 So. 603 (1940).

3. Process.

Petition for reorganization of closed state bank is part of liquidation proceedings, and no original process by way of summons to depositors is necessary, since liquidation proceeding is quasi receivership. Dunn v. Love, 172 Miss. 342, 155 So. 331, 92 A.L.R. 1323 (1934), aff'd, 295 U.S. 64, 55 S. Ct. 558, 79 L. Ed. 1303, 96 A.L.R. 1438 (1935).

4. —Notice by citation.

In proceedings for liquidation of state bank wherein petition was filed for reorganization of bank, citation directed to parties in interest should be served in reasonable manner and for reasonable length of time, all circumstances considered. Dunn v. Love, 172 Miss. 342, 155 So. 331, 92 A.L.R. 1323 (1934), aff'd, 295 U.S. 64, 55 S. Ct. 558, 79 L. Ed. 1303, 96 A.L.R. 1438 (1935).

In proceeding for liquidation of state bank, wherein petition was filed for reorganization of bank, personal service of citation on selected fifteen out of five thousand depositors, and publication of citation in newspaper published in county wherein bank was located, held sufficient compliance with requirement that notice by citation should be given. Dunn v. Love, 172 Miss. 342, 155 So. 331, 92 A.L.R. 1323 (1934), aff'd, 295 U.S. 64, 55 S. Ct. 558, 79 L. Ed. 1303, 96 A.L.R. 1438 (1935).

Where petition for reorganization of closed state bank is filed in proceedings for liquidation of bank, citation to parties in interest need not be served either with same formality or for same length of time as original process by way of summons. Dunn v. Love, 172 Miss. 342, 155 So. 331, 92 A.L.R. 1323 (1934), aff'd, 295 U.S. 64, 55 S. Ct. 558, 79 L. Ed. 1303, 96 A.L.R. 1438 (1935).

RESEARCH REFERENCES

Am Jur. 10 Am. Jur. 2d, Banks and Financial Institutions §§ 1035, 1048, 1053, 1109-1114.

CJS. 9 C.J.S., Banks and Banking §§ 156-158.

§ 81-9-15. Limitation on custodial period; approval of acts involving discretion or judgment.

The period in which the state comptroller shall remain the custodian of banks closed as provided in Section 81-9-5 shall not exceed ninety days, and during such period all acts of the state comptroller involving discretion or judgment shall be approved by order of the chancellor, entered in the cause provided for in Section 81-9-9 in the same manner and to the same extent as if the state comptroller were a receiver.

SOURCES: Codes, 1942, § 5247; Laws, 1934, ch. 146.

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Section 81-1-117 abolished the office of state comptroller, and provided that the functions, duties and responsibilities would be assumed by the commissioner of banking and consumer finance.

Cross References — State-chartered banks having and possessing the rights, powers, privileges, immunities, duties and obligations of a national bank having its principal place of business in this state, irrespective of any conflict with the provisions of this section, see § 81-5-1(9).

Appointment of receiver at end of ninety day period, see § 81-9-17.

§ 81-9-17. Receiver to be appointed.

At the end of ninety days, if the state comptroller has not sold the assets of the bank as provided in Section 81-9-11 above, the state comptroller shall file a petition in the proper chancery court in a cause to be entitled "In the matter of the receivership of (name of bank)." Such petition shall recite the taking of the bank into custody under the provisions of this chapter, the failure to sell the assets as provided in Section 81-9-11 above, and shall pray for the appointment of a receiver. The chancellor shall enter an order upon such petition, appointing a receiver of his own selection who shall not have been an officer, director or employee of the bank for a period of five years prior to the closing thereof. However, upon petition signed by the owners and holders of a majority in amount of the deposit liability of the bank, the chancellor may appoint such an officer, director or employee as receiver.

SOURCES: Codes, 1942, § 5248; Laws, 1934, ch. 146.

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Cross References — Appointment or removal of receivers by chancery court, see §§ 11-5-151 et seq.

State-chartered banks having and possessing the rights, powers, privileges, immunities, duties and obligations of a national bank having its principal place of business in this state, irrespective of any conflict with the provisions of this section, see § 81-5-1(9).

Bond of receiver, see § 81-9-21.

Duties of receiver, see § 81-9-23.

Powers of receivers, see §§ 81-9-25 et seq.

Depositors' liquidation, see §§ 81-9-43 et seq.

Appointment of a receiver for an insolvent savings association, see § 81-12-183.

JUDICIAL DECISIONS

1. In general.

A decree discharging a receiver did not prevent institution of another receivership. Franks v. Receiver of Booneville Banking Co., 202 Miss. 858, 32 So. 2d 859 (1947).

RESEARCH REFERENCES

Am Jur. 10 Am. Jur. 2d, Banks and Financial Institutions §§ 1032-1037, 1081-1083.

CJS. 9 C.J.S., Banks and Banking §§ 176 et seq.

§ 81-9-19. Surrender of assets to receiver; reports.

The state comptroller shall forthwith surrender to the receiver possession of all the assets of the bank, including the books and records thereof, and shall render to the receiver a true accounting and report of all transactions concerning assets and liabilities of the bank during the period of the state comptroller's custody thereof. Whereupon, future liability of the state comptroller with reference to said bank shall cease.

SOURCES: Codes, 1942, § 5249; Laws, 1934, ch. 146.

Editor's Note — Section 81-1-57 provides that wherever the words "state comptroller" or "comptroller", when referring to the office of state comptroller of banks, shall be construed to mean the commissioner of banking and consumer finance.

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Cross References — State-chartered banks having and possessing the rights, powers, privileges, immunities, duties and obligations of a national bank having its principal place of business in this state, irrespective of any conflict with the provisions of this section, see § 81-5-1(9).

§ 81-9-21. Bond of receiver.

The receiver shall furnish bond in such amount and with such sureties as may be fixed by the chancellor, payable to the State of Mississippi, and conditioned for the faithful performance of his duties as receiver of such bank. Such bond may, with consent of the chancellor, be put in action by anyone aggrieved by the receiver's conduct of the affairs of the insolvent bank, and premiums on the bond shall be an expense of the liquidation.

SOURCES: Codes, 1942, § 5250; Laws, 1934, ch. 146.

Cross References — State-chartered banks having and possessing the rights, powers, privileges, immunities, duties and obligations of a national bank having its principal place of business in this state, irrespective of any conflict with the provisions of this section, see § 81-5-1(9).

§ 81-9-23. Duties of receiver.

The receiver shall proceed promptly to wind up the affairs of the bank, and in all matters involving discretion or judgment shall obtain the approval of the chancellor in an order entered in the receivership cause which was opened by the state comptroller by the filing of the petition asking for the appointment of a receiver. By and with the consent of the chancellor the receiver may be made a party respondent to petitions filed in the receivership caused by persons seeking to have adjudicated rights in the assets and affairs of the bank, and which the receiver has refused to recognize. The receiver may sell all or any portion of the assets of the bank, real, personal, or mixed, for cash or upon other terms; may effect compromises, and bring about exchanges of property; all under the approval of the chancellor with a view to equity and approximate justice to all parties, and a prompt and efficient liquidation.

SOURCES: Codes, 1942, § 5251; Laws, 1934, ch. 146.

Editor's Note — Section 81-1-117 abolished the office of state comptroller, and provided that the functions, duties and responsibilities would be assumed by the commissioner of banking and consumer finance.

Cross References — State-chartered banks having and possessing the rights, powers, privileges, immunities, duties and obligations of a national bank having its principal place of business in this state, irrespective of any conflict with the provisions of this section, see § 81-5-1(9).

Receiver's duty in regard to proof of claims, see § 81-9-31.

Receiver's inventory and bookkeeping, see § 81-9-33.

Payment of dividends by receiver, see § 81-9-35.

Reports by receiver, see § 81-9-37.

JUDICIAL DECISIONS

1. In general.

Receiver of insolvent bank may bring suit, either in courts of law or in equity, when authorized to do so by appointing court. Kretschmar v. Stone, 90 Miss. 375, 43 So. 177 (1907).

Receiver of insolvent bank, when authorized by appointing court, may sue at law to recover from stockholders dividends paid by corporation when insolvent. Kretschmar v. Stone, 90 Miss. 375, 43 So. 177 (1907).

RESEARCH REFERENCES

Am Jur. 10 Am. Jur. 2d, Banks and Financial Institutions § 1083.

CJS. 9 C.J.S., Banks and Banking §§ 176, 182 et seq.

§ 81-9-25. Receivers empowered to borrow money.

By and with the approval of the chancellor all receivers of insolvent banks in this state shall have power to borrow money, in the capacity of receivers, from any individual or corporation, including corporations or other agencies organized under the laws of the United States. For the security of such loans the receiver may pledge, mortgage and hypothecate any portion of or all of the assets, real, personal, or mixed, of such insolvent bank. Such loan may be extended, renewed, and rearranged from time to time, and shall be the direct obligation of the receivership, but the receiver shall not be personally liable for payment thereof. The lender shall not be charged with any duty or responsibility in regard to the application by the receiver of the proceeds of any such loan.

SOURCES: Codes, 1942, § 5252; Laws, 1934, ch. 146.

Cross References — State-chartered banks having and possessing the rights, powers, privileges, immunities, duties and obligations of a national bank having its principal place of business in this state, irrespective of any conflict with the provisions of this section, see § 81-5-1(9).

RESEARCH REFERENCES

Am Jur. 10 Am. Jur. 2d, Banks and Financial Institutions § 1083.

§ 81-9-27. Receivers may sell assets of insolvent banks.

By and with the approval of the chancellor all receivers of insolvent banks in this state shall have power to sell, for cash or on terms, to any individual or corporation, including corporations or other agencies organized under the laws of the United States, any portion or all of the assets of such insolvent bank. Such conveyances shall have the effect of a quit claim of all the right, title and interest of the receiver, and the purchaser shall not be charged with any duty or responsibility in regard to the application by the receiver of the purchase money. By and with the approval of the chancellor and of the state comptroller, receivers of insolvent banks may sell any portion or all of the assets of such receivership to an active and operating bank the purchase price to be in cash or on terms, or otherwise; or, the purchasing bank may be allowed to assume a percentage of the liabilities of the insolvent bank, with optional privilege to the creditors to receive cash or other property in settlement of their claims. Under this section chancellors shall have broad powers and discretion to approve plans which are for the best interests of creditors of closed banks, taken as a whole.

SOURCES: Codes, 1942, § 5253; Laws, 1934, ch. 146.

Editor's Note — Section 81-1-57 provides that wherever the words "state comptroller" or "comptroller", when referring to the office of state comptroller of banks, shall be construed to mean the commissioner of banking and consumer finance.

Section 81-1-117 abolished the office of state comptroller, and provided that the functions, duties and responsibilities would be assumed by the commissioner of banking and consumer finance.

Cross References — Application of territorial and numerical restrictions on establishment of branch banks to bank purchaser of insolvent bank, see §§ 81-7-7, 81-7-8.

Applicability of time constraints for approval of certificate of incorporation to purchasers of insolvent institutions, see § 81-3-13.

State-chartered banks having and possessing the rights, powers, privileges, immunities, duties and obligations of a national bank having its principal place of business in this state, irrespective of any conflict with the provisions of this section, see § 81-5-1(9).

Sale of assets of insolvent banks by state comptroller, see § 81-9-11.

RESEARCH REFERENCES

CJS. 9 C.J.S., Banks and Banking § 185.

§ 81-9-29. Liquidation; separate assets for creditors; corporate stock.

Where a bank chartered under the laws of the State of Mississippi has failed, or may hereafter fail, and in the process of liquidation or after reorganization or reopening of such failed bank certain assets are placed in a separate fund for the benefit of creditors of such bank, it is found that said bank, or the owner of such trust assets, owns stock in, has a lien on, or is in any way interested in the stock of a corporation, organized and doing business under the laws of the State of Mississippi, and such bank, or owners of such trust assets, is unable to sell such stock at its reasonable fair value, and such stock is less than ten percent of the outstanding stock of said corporation, and the remainder of the stock of such corporation is owned by a small number of persons, then the chancery court of the county in which said bank is located is authorized and empowered in a suit brought for that purpose, to fix the value of said stock. In the event the holders of the majority of the stock will not pay the value as fixed by the court then the court shall order the assets of said corporation, or a sufficient amount thereof, to be sold to pay the value of said stock as fixed by the court, if the surplus undivided profits and other accumulations of said corporation are sufficient to take care of the value of said stock as fixed by the court without seriously interfering with the continued operation of said corporation.

SOURCES: Codes, 1942, § 5287; Laws, 1938, ch. 247.

Cross References — State-chartered banks having and possessing the rights, powers, privileges, immunities, duties and obligations of a national bank having its

principal place of business in this state, irrespective of any conflict with the provisions of this section, see § 81-5-1(9).

Priority of claims for payment against certain insolvent banks upon liquidation or upon execution of purchase of assets and assumption of liabilities, see § 81-9-75.

JUDICIAL DECISIONS

1. In general.

Purchaser of failed bank's assets gains only such title as is held by receiver. FDIC v. O'Hara's, Inc., 713 F. Supp. 966 (N.D. Miss. 1989).

RESEARCH REFERENCES

ALR. Meaning of "book value" of corporate stock. 51 A.L.R.2d 606.

§ 81-9-31. Proof of claims.

The receiver appointed under Section 81-9-17 shall cause notice to be given in such newspaper as the court may direct, once a week for four consecutive weeks, calling on all persons who may have claims against the bank to present the same and make proof thereof upon forms to be furnished by the receiver, at a place and within a time specified in the notice, which shall be approximately ninety days from the date of the first publication. A copy of the notice shall be mailed to all depositors and creditors as shown by the books of the bank, at their last known post-office address. If the receiver doubts the justice or validity of any claim he shall reject the same by serving notice upon the claimant in writing, and such rejection shall be final unless the claimant shall, within ninety days from the date of such rejection, petition the chancellor in the receivership cause for a review of the action of the receiver. Claims presented more than ninety days after the first publication of the above recited notice shall be entitled to share only in dividends thereafter paid.

SOURCES: Codes, 1942, § 5254; Laws, 1934, ch. 146.

Cross References — Insolvency and preference under the Uniform Commercial Code, see § 75-4-214.

State-chartered banks having and possessing the rights, powers, privileges, immunities, duties and obligations of a national bank having its principal place of business in this state, irrespective of any conflict with the provisions of this section, see § 81-5-1(9).

Priority of claims for payment against certain insolvent banks upon liquidation or upon execution of purchase of assets and assumption of liabilities, see § 81-9-75.

JUDICIAL DECISIONS

1. In general.

Where receiver is merely custodian of fund for distribution to beneficiaries of proceeds of law suit which has been compromised and settled, it is within discretion of trial court to permit a beneficiary to intervene and file claim to portion of the fund after the expiration of the time allowed by order of the court for that purpose. Edwards v. Williams, 196 Miss. 618, 18 So. 2d 128 (1944).

A claim should be admitted at any time before actual distribution, or even after partial distribution if there is surplus in hands of receiver so as not to interfere with payments already made, even though not filed within the time specified in an order given for the publication of notice, where reasonable excuse for such delay is shown. Edwards v. Williams, 196 Miss. 618, 18 So. 2d 128 (1944).

Although claimant failed to prove her claim to participate with other certificate holders in proceeds of suit which had been compromised and settled until after expiration of time allowed therefor in court order, directing receiver to publish notice requiring certificate holders to prove their claims within a certain time, and to give further notice thereof by mail, she was entitled to participate in first dividend declared payable to those who had complied with the terms of such notice, where no notice had been mailed to the claimant who neither knew of the appointment of the receiver nor of the fact that a fund was to be distributed until after the time limitation had expired, and where the receiver had on hand undistributed funds sufficient to pay the declared dividend to all certificate holders. Edwards v. Williams, 196 Miss. 618, 18 So. 2d 128 (1944).

RESEARCH REFERENCES

Am Jur. 10 Am. Jur. 2d, Banks and Financial Institutions §§ 1098, 1115, 1116.

4 Am. Jur. Pl & Pr Forms (Rev), Banks, Form 142.

CJS. 9 C.J.S., Banks and Banking §§ 190 et seq.

§ 81-9-33. Inventory and books by the receiver.

The receiver shall make an inventory of all assets and liabilities of the bank which may have been turned over to him by the state comptroller, or of which he may otherwise come into possession, and shall file a transcript of such inventories, certified by him as correct, in the court file of the receivership cause. He shall cause to be kept complete books of account of all transactions involving the assets and liabilities of the bank.

SOURCES: Codes, 1942, § 5255; Laws, 1934, ch. 146.

Editor's Note — Section 81-1-57 provides that wherever the words "state comptroller" or "comptroller", when referring to the office of state comptroller of banks, shall be construed to mean the commissioner of banking and consumer finance.

Section 81-1-117 abolished the office of state comptroller, and provided that the functions, duties and responsibilities would be assumed by the commissioner of banking and consumer finance.

Cross References — State-chartered banks having and possessing the rights, powers, privileges, immunities, duties and obligations of a national bank having its principal place of business in this state, irrespective of any conflict with the provisions of this section, see § 81-5-1(9).

RESEARCH REFERENCES

CJS. 9 C.J.S., Banks and Banking § 176.

§ 81-9-35. Dividends by receiver.

From time to time, upon order of the chancellor, the receiver shall pay dividends to such persons as may by right be thereunto entitled, and it shall be the duty of the receiver paying dividends to make every reasonable effort to locate the party or parties entitled thereto.

SOURCES: Codes, 1942, § 5256; Laws, 1934, ch. 146; Laws, 1936, ch. 165; Laws, 1938, ch. 246.

Cross References — State-chartered banks having and possessing the rights, powers, privileges, immunities, duties and obligations of a national bank having its principal place of business in this state, irrespective of any conflict with the provisions of this section, see § 81-5-1(9).

RESEARCH REFERENCES

Am Jur. 10 Am. Jur. 2d, Banks and Financial Institutions § 1117.

§ 81-9-37. Reports by receiver; petition for discharge.

(1) The receiver shall make such reports of his administration to the chancellor as the chancellor may require, which reports shall be filed in the court file of the receivership cause. Before the receivership cause shall be closed, a final report shall be made of such matters as may be required by the chancellor, and which shall include classified lists and totals of expenses; the gross amount of collections; classified lists and totals of disbursements to common creditors and other claimants; and all dividends on hand belonging to depositors, creditors, stockholders or others which for any reason have not been distributed; also the names of such depositors, creditors and stockholders, together with the amount of dividends belonging to each.

(2) The receiver shall file a petition for discharge with his final report, and the final report, together with said petition, shall remain on file subject to the inspection of any person interested. If the chancellor is satisfied with the final report of the receiver, he shall, by order entered on the minutes of the court, direct that the clerk of the court cause a notice to be run in a newspaper published in the county wherein the receivership is pending, or if none is so published, in some newspaper having a general circulation therein, which notice shall state that the liquidation of the bank has been completed and that the final report of the receiver and petition for his discharge are on file; that unless written objection is filed with the clerk of the court within thirty days from the date of the first publication of the notice, all persons shall be forever precluded from filing any claim against the bank or the receiver, and from questioning any of the acts of the receiver, except for fraud. Said notice shall be published once a week until the expiration of said thirty day period.

(3) Should the receiver have dividends on hand belonging to depositors, creditors, stockholders or others which have not been distributed the notice hereinabove referred to shall specify this fact, and shall give the name of each

party who is entitled to such dividend, but it shall not be necessary to give the amount thereof. The notice shall direct that said parties call for said dividends prior to the day set for the filing of written objections, otherwise, their claim thereto shall be forfeited. On the day of the final hearing if there are dividends on hand which have not been called for, the receiver shall not be discharged, but the chancellor, by order entered on the minutes of the court, shall direct the receiver to make distribution of such unclaimed dividends to the known depositors and creditors pro rata. In the event the known depositors and creditors have already been paid in full, or if any are unpaid an amount in cash equal to that requisite to pay every such person, as shown to be due to them by the books of the bank is set apart and paid over in accordance herewith to the state comptroller as herein provided, the amount, if any, remaining shall be distributed to the stockholders pro rata.

(4) If on the day of the final hearing there are no dividends on hand for distribution and there have been no objections filed to the discharge of the receiver, the chancellor shall enter an order granting his discharge. If there are dividends on hand, the chancellor shall direct their distribution as above provided. Should written objections be filed to the discharge of the receiver within the time above provided, the chancellor shall set the matter for hearing in vacation or in term time as he may deem proper, and the same shall be proceeded with as any other action in chancery. In no event shall anyone be permitted to file an objection after the time specified in the notice above provided for.

(5) Should there be any dividends to stockholders not called for at the expiration of thirty days from the date the chancellor orders the distribution as above provided in subsection 3 of this section, the receiver shall pay the same and all amounts due to depositors and creditors who have not called for payment, to the state comptroller, who shall hold the same for the parties entitled thereto hereunder for a period of at least one year from the date of its receipt by him, and notice shall be given as hereinafter provided.

(6) Where any depositors' liquidating corporation has not paid its depositors in full, and has realized everything possible from its assets, but still has on hand insufficient money to make a distribution to its creditors, the chancery court creating such corporation may, upon finding such facts, dissolve such liquidating corporation and discharge its directors and their sureties, and make such orders with respect to the cash on hand as may appear equitable and proper, after an application for a dissolution of said corporation, accompanied by a final report of the administration thereof from the date of the creation of said corporation, has been on file with the clerk of said court not less than thirty days, and notice of the filing thereof has been given by inserting one notice in a newspaper published in the county wherein the receivership is pending not less than ten days before the date set for the hearing thereof.

(7) Nothing contained in this section shall apply to any bank heretofore or hereafter liquidated by the Federal Deposit Insurance Corporation.

SOURCES: Codes, 1942, § 5257; Laws, 1934, ch. 146; Laws, 1938, Ex. ch. 52.

Editor's Note — Section 81-1-57 provides that wherever the words "state comptroller" or "comptroller", when referring to the office of state comptroller of banks, shall be construed to mean the commissioner of banking and consumer finance.

Section 81-1-117 abolished the office of state comptroller, and provided that the functions, duties and responsibilities would be assumed by the commissioner of banking and consumer finance.

Cross References — State-chartered banks having and possessing the rights, powers, privileges, immunities, duties and obligations of a national bank having its principal place of business in this state, irrespective of any conflict with the provisions of this section, see § 81-5-1(9).

Depositors' liquidations, see §§ 81-9-43 et seq.

Appointment of Federal Deposit Insurance Corporation as receiver, see § 81-9-73.

JUDICIAL DECISIONS

1. In general.

A final decree discharging a receiver does not in itself effect dissolution of the banking corporation. Franks v. Receiver of Booneville Banking Co., 202 Miss. 858, 32 So. 2d 859 (1947).

§ 81-9-39. Compensation and expenses of receiver and attorney.

Compensation of the receiver and attorney shall be fixed by the court from time to time, upon a salary basis. In banks with total assets of one million dollars ($1,000,000.00) or more the salary of the receiver shall not exceed three hundred dollars ($300.00) per month and the salary of the attorney shall not exceed two hundred fifty dollars ($250.00) per month. In banks with total assets of less than one million dollars ($1,000,000.00) the salary of the receiver shall not exceed two hundred dollars ($200.00) per month and the salary of the attorney shall not exceed one hundred fifty dollars ($150.000) per month. The receiver and attorney shall also be allowed reasonable amounts for necessary expenses, all of which shall be a charge upon the assets of the bank. Any receiver, attorney, or employee may be removed for cause by the chancellor at any time.

In the event a bank receivership shall be closed and the receiver and attorney finally discharged and it should appear after a lapse of ten (10) years from the date of the closing of said receivership that certain probable assets might be recovered for the benefit of depositors and creditors of said bank and the court shall reopen said receivership for the purpose of recovering said assets, the receiver or attorney, or both, so appointed by the court to recover said assets may be allowed for his services in lieu of the salaries above stated, a fee to be fixed by the court, and said fee may be either a cash fee or an interest in the property or thing recovered in the sole discretion of the court, and the court may allow such fee for services heretofore rendered for a period of not more than six (6) years prior to March 6, 1958.

SOURCES: Codes, 1942, § 5261; Laws, 1934, ch. 146; Laws, 1958, ch. 165.

Cross References — State-chartered banks having and possessing the rights, powers, privileges, immunities, duties and obligations of a national bank having its

principal place of business in this state, irrespective of any conflict with the provisions of this section, see § 81-5-1(9).

RESEARCH REFERENCES

ALR. Attorneys' fees: cost of services provided by paralegals or the like as compensable element of award in state court. 73 A.L.R.4th 938.

CJS. 9 C.J.S., Banks and Banking § 184.

§ 81-9-41. Liquidation of solvent bank.

Any bank found to be solvent may be liquidated, if desired by the bank, in accordance with this section.

It is the purpose of this section to require that the claims of all depositors and creditors as reflected by the books of the bank, be paid, whether proven or not, provided they are called for within the period stipulated in this section. The bank shall continue as a corporation until that authorized hereunder to be done has been accomplished whereafter its charter shall be surrendered as provided by law.

(a) If the receiver shall have heretofore paid, or shall hereafter pay, or have assets readily convertible for payment to each and every depositor, creditor and claimant of such bank whose claim or claims shall have been filed, whether duly proven and allowed or undisposed of, the principal amount, with additions, if any, shown by the books of the bank to be due by the bank, or if every such unpaid depositor, creditor or claimant for whom no such provision has been made as above, if any there be, consents thereto in writing, and the receiver shall have paid all expenses of the liquidation, all out of the assets of the failed bank, upon petition of a board of directors to be selected by the stockholders of the bank at a special meeting to be held therefor on call of any of the former officers of the bank, and with the consent of all claimants or creditors who have filed claims which have not been finally disposed of or which are disputed, and with the consent of every person, firm or corporation having a lien on the assets of the bank, if any there be, the receiver shall deliver to any such agent or agents of said bank, selected by the board of directors as hereinabove provided, upon a decree therefor made by the chancery court or the chancellor in vacation, all undivided and uncollected or other assets of said bank then remaining in his hands or under his control subject to any liens thereupon. On such delivery, the receiver and the surety on his bond shall be discharged from any and all liability to the bank, its creditors and all other persons, provided that (1) before making such delivery, the receiver shall have turned over to the state comptroller for depositors the principal amount, with additions, if any, shown by the books of the bank to be due by the bank to such depositors, and provided, (2) that the receiver shall file a final report showing all such matters and things as should be embraced in the final report hereinabove required for complete liquidation. Thereupon the chancellor shall by order entered direct that the clerk of the court cause a notice to be run in a newspaper published in the county where the receivership is pending, or if none is so published, in some newspaper having a general circulation therein, which notice shall state that the liquidation of the bank by the receiver is to be terminated and the assets remaining delivered to the bank as herein provided, and that the final report of the receiver has been filed and an application made to transfer the remaining assets in accordance herewith to an agent of the bank, and unless written objection is filed with the clerk within thirty days from the first publication of the notice, all persons shall be forever precluded from filing any claim against the receiver or from questioning any of the acts of the receiver except for fraud, or claims, demands and rights which are to be assumed by the bank and subject to which the transfer is to be made. Said notice shall be published once a week until the expiration of said thirty day period.

(b) All unpaid deposits, debts and dividends hereunder paid over to the state comptroller of banks shall be held in trust for the parties rightfully entitled thereto, to whom payment thereof shall be made, less any costs lawfully deductible therefrom. In case the state comptroller shall be in doubt as to the person or amount, he may file in regard thereto a bill of interpleader and thereupon be finally discharged, paying from such amount so deposited in court, the requisite costs for filing such bill.

Within one year after receipt of any amount from a receiver, the state comptroller shall give notice of unclaimed amounts by publication in some newspaper having a general circulation in the county where such banking corporation was domiciled, once a week for three consecutive weeks, notifying such unpaid persons to come forward and claim the amounts due, and in said notice stating the amount of money received, the name of the party who is entitled to any portion thereof according to the books of the bank, but without specifying the amount, and shall command said parties to call for such amounts prior to the date fixed for payment to the state treasurer, and stating that unless they shall do so, the amounts will be paid over to the state treasurer in trust on or after a day therein to be named. After the expiration of said time, the state comptroller shall pay over such amounts held by him to the state treasurer, less any publication or other costs incurred in connection therewith and give to the state treasurer a list of all persons entitled to any amount together, if possible, with the amount thereof and the residence, if possible, of such person. Thereupon the state treasurer shall be required to place the amount so paid over to him in a special trust fund in the state treasury for the benefit of any and all persons rightfully entitled thereto, and thereafter when said funds are so paid over, there shall be no further liability on the bank, its receiver, the state comptroller, his bond or any other agent or employee, for any amount so thus paid over to the state treasurer under this section. Persons rightfully entitled to any such amounts so paid over into this trust fund shall be paid the amount thereof direct from such trust fund by the state treasurer without specific appropriation therefor, such payment to be made by the state treasurer upon requisition drawn by the state comptroller on the written approval of the attorney general. The state comptroller and the state treasurer shall have power to pay from such amount on hand the cost of any publication and other expense items properly incurred chargeable thereto, which amounts shall be deducted from the amount to be paid over. The state comptroller or the state treasurer may apply the interest earned by the money so held by either of them, if any, towards defraying the expenses of the payment and the distribution to the persons entitled.

(c) After the expiration of fifteen (15) years from the date of the receipt of such amount by the state treasurer, the deposits and amounts then unclaimed shall be placed by the state treasurer in the general fund of the State of Mississippi, and such fund shall belong to the State of Mississippi, free from the claims of all persons whatsoever.

(d) The delivery of such assets to such agent of said bank, selected as aforesaid, and the discharge of such receiver shall not release, discharge or affect any right, claim or action which any creditor or claimant consenting to such transfer and discharge might then or thereafter have against said bank, or the stockholders of the bank on account of their double liability, if any, if the assets of the bank are insufficient to pay said creditors' or claimants' claims in full, with interest, if any is due; it being the intention hereof that the liability of the bank and its stockholders, if any, shall not be affected or released by the discharge of the receiver. The court having jurisdiction of the receivership shall retain jurisdiction over any suit, petition or proceeding brought pursuant hereto, and especially involving a contested claim for depositor or creditor, and such suit, or suits, may be as fully and completely determined and adjudicated by said court as if had under the receivership.

(e) Such agent or agents under the direction of the board of directors of said bank shall convert the assets coming into his or their possession into cash, if so directed, and after paying all taxes and any and all unpaid claims, lawfully established, and the expenses of said liquidation, shall distribute the assets in cash or kind pro rata among the stockholders of the bank in proportion to the stock held by each and every stockholder. Such bank may from time to time hold meetings of its stockholders in accordance with its by-laws for the election of boards of directors and such other corporate business as may properly come before the meeting looking towards its liquidation, and such directors may, from time to time, replace such agent or agents in charge of such liquidation, paying such agent or agents such compensation as they may determine. All expenses of such liquidation by such agent or agents shall be subject to approval by the board of directors of the bank.

(f) Prior to or contemporaneously with the delivery of said assets to the agent or agents of said bank, it shall be a condition thereto that all persons having a direct lien on the assets of the trust and also all persons having an undisposed of disputed claim, if any there be, pending in the receivership, be required to give their consent in writing to the release of the assets in the hands of the receiver to the bank. When the court is satisfied of compliance with all requirements hereinbefore contained, a decree shall be entered which shall have the effect (1) to discharge the receiver and his surety from all liability to all persons; (2) to revest title to all assets withheld by the receiver in the old banking corporation and to vest such corporation with full authority to receive and deal with such property for purposes only of effective liquidation.

SOURCES: Codes, 1942, §§ 5258, 5259; Laws, 1938, Ex. ch. 52.

Editor's Note — Section 81-1-57 provides that wherever the words "state comptroller" or "comptroller", when referring to the office of state comptroller of banks, shall be construed to mean the commissioner of banking and consumer finance.

Section 81-1-117 abolished the office of state comptroller, and provided that the functions, duties and responsibilities would be assumed by the commissioner of banking and consumer finance.

Cross References — Insolvency and preference under the Uniform Commercial Code, see § 75-4-214.

State-chartered banks having and possessing the rights, powers, privileges, immunities, duties and obligations of a national bank having its principal place of business in this state, irrespective of any conflict with the provisions of this section, see § 81-5-1(9).

Depositors' liquidation, see §§ 81-9-43 et seq.

Priority of claims for payment against certain insolvent banks upon liquidation or upon execution of purchase of assets and assumption of liabilities, see § 81-9-75.

Voluntary dissolution of credit unions, see § 81-13-59.

Dissolution of solvent banks, see also § 81-5-101.

RESEARCH REFERENCES

Am Jur. 10 Am. Jur. 2d, Banks and Financial Institutions §§ 1117 et seq., 207-213.

§ 81-9-43. Procedure to obtain depositors' liquidation.

Proceedings to accomplish depositor liquidation of banks shall be begun by the filing of a petition in the chancery court of the county in which such bank shall be domiciled within the ninety day period in which the state comptroller remains in charge of the closed bank. Each petition shall be signed by depositors owning sixty percent in amount of deposits not preferred and totally unsecured, and the allegations thereof shall be sworn to by at least one of the signers of the petition, either as true and correct upon personal knowledge, or upon information and belief. If any signer be a corporation the signature thereof by the president or vice-president shall be sufficient, and the signature of any partnership or similar firm by any member thereof shall be sufficient. The state comptroller shall be the only necessary party respondent to such petition. The petition may be heard by the chancellor in vacation or in term time, at such place in his district as he may direct, upon certificate of the chancery clerk that he has sent, at least five days before such hearing, by registered mail, to the respondent at the city of Jackson, Mississippi, a true copy of the petition, with time and place of hearing designated thereon. The cause in which such petition shall be filed shall be entitled "In the matter of the depositor liquidation of (name of bank proposed to be liquidated) by (naming here the liquidating corporation proposed to be formed)."

SOURCES: Codes, 1942, § 5262; Laws, 1934, ch. 146.

Editor's Note — Section 81-1-117 abolished the office of state comptroller, and provided that the functions, duties and responsibilities would be assumed by the commissioner of banking and consumer finance.

Cross References — Dissolution of solvent banks, see §§ 81-5-101, 81-9-41.

State-chartered banks having and possessing the rights, powers, privileges, immunities, duties and obligations of a national bank having its principal place of business in this state, irrespective of any conflict with the provisions of this section, see § 81-5-1(9).

Appointment of receiver, see § 81-9-17.

Release of stockholders' double liability, see § 81-9-51.

RESEARCH REFERENCES

Am Jur. 10 Am. Jur. 2d, Banks and Financial Institutions §§ 207-213, 1020, 1182-1184, 1197.

CJS. 9 C.J.S., Banks and Banking §§ 164 et seq.

§ 81-9-45. Petition and decree thereon.

If the petition shall be signed and sworn to as aforesaid, and shall pray that the liquidation of the bank shall be conducted by the depositors and that a liquidating corporation be formed for such purpose, the chancellor shall, by decree on such petition, create a liquidating corporation, not for pecuniary gain, and without capital or capital stock. The decree shall name five directors for the corporation who shall be natural persons chosen by the chancellor from among the signers of the petition, but such signers as may be named as directors in the petition shall be so named in the decree. The decree shall give the corporation a name, which shall include the words, "liquidating corporation," preceded by the name of the bank to be liquidated. The municipality in which the bank to be liquidated is domiciled shall be the domicile of the corporation. The decree shall be recorded on the book of corporation charters in the office of the chancery clerk of the proper county, and need not be published.

SOURCES: Codes, 1942, § 5263; Laws, 1934, ch. 146.

Cross References — State-chartered banks having and possessing the rights, powers, privileges, immunities, duties and obligations of a national bank having its principal place of business in this state, irrespective of any conflict with the provisions of this section, see § 81-5-1(9).

General powers of liquidating corporation, see § 81-9-49.

§ 81-9-47. Effect of decree.

The signing of the decree shall divest the state comptroller and the department of bank supervision of all title to the assets of the bank and of all control of the liquidation thereof, and the state comptroller and the department shall be relieved of future liability thereto, except for proper delivery of the assets of the corporation. The recording of a certified copy of the decree in the deed records of any county shall have the same effect as the recording of a deed to the assets.

SOURCES: Codes, 1942, § 5264; Laws, 1934, ch. 146.

Editor's Note — Section 81-1-57 provides that wherever the words "state comptroller" or "comptroller", when referring to the office of state comptroller of banks, shall be construed to mean the commissioner of banking and consumer finance.

Section 81-1-117 abolished the office of state comptroller, and provided that the functions, duties and responsibilities would be assumed by the commissioner of banking and consumer finance.

Cross References — State-chartered banks having and possessing the rights, powers, privileges, immunities, duties and obligations of a national bank having its principal place of business in this state, irrespective of any conflict with the provisions of this section, see § 81-5-1(9).

§ 81-9-49. General powers of liquidating corporation.

Liquidating corporations created under the authority of this chapter shall be bodies corporate and politic, with power to sue and be sued by their respective corporate names. No action shall be begun against any such corporation except in the county in which it is domiciled. The corporation shall have as its seal the seal of the bank which it is liquidating. Such corporation shall have generally the powers and responsibilities of receivers with respect to the assets and liabilities of all banks which they shall liquidate. Acts involving discretion shall be subject to approval of the chancery court, except as herein specifically provided.

SOURCES: Codes, 1942, § 5265; Laws, 1934, ch. 146.

Cross References — State-chartered banks having and possessing the rights, powers, privileges, immunities, duties and obligations of a national bank having its principal place of business in this state, irrespective of any conflict with the provisions of this section, see § 81-5-1(9).

§ 81-9-51. Double liability of certain stockholders released.

Such corporation shall have power to bring suits to enforce any liability of directors or officers of the bank, but the double liability of stockholders, as provided in Section 81-5-27, by the turning over of the liquidation by the depositors as herein provided, shall be released as to all stockholders of any such bank. However, no stockholder shall be refunded any sum of money which he may have actually paid in discharge of his double liability, nor shall the release of double liability provided by this section be construed to extend to any instance where a stockholder shall have executed a promissory note or other instrument of writing in settlement of such double liability. All double liabilities of stockholders, as referred to in this section, are canceled and released with respect to future liquidations.

SOURCES: Codes, 1942, § 5266; Laws, 1934, ch. 146.

Cross References — State-chartered banks having and possessing the rights, powers, privileges, immunities, duties and obligations of a national bank having its principal place of business in this state, irrespective of any conflict with the provisions of this section, see § 81-5-1(9).

Liability of stockholders generally, see § 81-5-27.

RESEARCH REFERENCES

CJS. 9 C.J.S., Banks and Banking §§ 5-47 et seq.

§ 81-9-53. Bond of directors; compensation.

Each director shall make bond, conditioned to perform faithfully his duties as director, payable to the corporation, with such surety or sureties as the chancellor may approve, and in such sum as the chancellor may, from time to time, direct, but in no case less than $2,000.00 for any one director. Such bonds shall serve generally the same purposes and be of the same general effect as a receiver's bond, and action upon such bonds may be brought by any party aggrieved. No action shall lie, however, against any director or upon any director's bond because of the exercise of any power recited in Section 81-9-61, excepting only instances of actual abuse of discretion.

No director shall be entitled to compensation as such, but the chancellor, may, in his discretion, allow conservative compensation on a salary basis for designated period of time, in instances where an unreasonable amount of any director's time shall be required for the faithful performance of his duties.

SOURCES: Codes, 1942, § 5267; Laws, 1934, ch. 146.

Cross References — State-chartered banks having and possessing the rights, powers, privileges, immunities, duties and obligations of a national bank having its principal place of business in this state, irrespective of any conflict with the provisions of this section, see § 81-5-1(9).

Receiver's bond, see § 81-9-21.

Prohibition against compensation for directors of credit unions, see § 81-13-29.

RESEARCH REFERENCES

Am Jur. 10 Am. Jur. 2d, Banks and Financial Institutions §§ 330 et seq.

CJS. 9 C.J.S., Banks and Banking § 119.

§ 81-9-55. Vacancies and removal of directors.

Vacancies among directors shall be filled by the chancellor on ex parte hearing in term time, or in vacation, but the choice of any four remaining directors shall be the choice of the chancellor, except for good cause shown.

Removal of directors shall be in the discretion of the chancellor, in term time or in vacation, on petition of any party aggrieved, and upon such notice not less than five days as the chancellor may direct.

SOURCES: Codes, 1942, § 5268; Laws, 1934, ch. 146.

Cross References — State-chartered banks having and possessing the rights, powers, privileges, immunities, duties and obligations of a national bank having its principal place of business in this state, irrespective of any conflict with the provisions of this section, see § 81-5-1(9).

§ 81-9-57. Officers of the corporation.

The directors shall choose from among themselves a president and a vice-president of the corporation. They shall also employ a liquidator who shall be ex officio secretary-treasurer of the corporation, and who need not be a depositor in the bank being liquidated by the corporation. No officer, except the liquidator, shall be entitled to compensation as such. The liquidator shall furnish bond, payable to the corporation, in such amount and with such surety or sureties as may be approved by the directors, conditioned to perform his duties faithfully as liquidator, and action upon such bond may be brought by any party aggrieved.

SOURCES: Codes, 1942, § 5269; Laws, 1934, ch. 146.

Cross References — State-chartered banks having and possessing the rights, powers, privileges, immunities, duties and obligations of a national bank having its principal place of business in this state, irrespective of any conflict with the provisions of this section, see § 81-5-1(9).

§ 81-9-59. Compensation of liquidator and other employees.

The directors shall fix the compensation of the liquidator, may employ and fix the compensation of counsel for the corporation; and may employ and fix the compensation of such clerical and other employees as they may deem necessary or advisable to carry on the business of the corporation.

SOURCES: Codes, 1942, § 5270; Laws, 1934, ch. 146.

Cross References — State-chartered banks having and possessing the rights, powers, privileges, immunities, duties and obligations of a national bank having its principal place of business in this state, irrespective of any conflict with the provisions of this section, see § 81-5-1(9).

RESEARCH REFERENCES

CJS. 9 C.J.S., Banks and Banking §§ 144, 145.

§ 81-9-61. Exercise of discretion without approval of court.

By authority of order on the minutes signed by all five directors, the corporation may do and perform, without approval of court, the following, to-wit:

(a) Employ and fix the compensations of the liquidator, counsel and other employees;

(b) Lease premises to be occupied by the corporation as business quarters;

(c) Borrow money, execute promissory notes, and pledge or mortgage the assets of the corporation;

(d) Compromise or extend indebtedness due the bank being liquidated, and release and surrender securities and collaterals;

(e) Compromise claims against the bank;

(f) Sell any or all assets of the bank for cash or on other terms;

(g) Barter or exchange any assets of the bank for other property;

(h) Lease any property belonging to the bank;

(i) Pay dividends to creditors or stockholders of the bank.

SOURCES: Codes, 1942, § 5271; Laws, 1934, ch. 146.

Cross References — State-chartered banks having and possessing the rights, powers, privileges, immunities, duties and obligations of a national bank having its principal place of business in this state, irrespective of any conflict with the provisions of this section, see § 81-5-1(9).

General powers of liquidating corporation, see § 81-9-49.

JUDICIAL DECISIONS

1. In general.

All persons are charged with notice of the conditions under which settlements may be made under this statute, and in cases not involving the approval of the chancery court as to settlements of indebtedness due a bank being liquidated, this section must be complied with. Under this section [Code 1942, § 5271] the power of the liquidating agent to make a settlement is dependent upon the order of the directors spread on the minutes and, in the absence of such authority so entered on the minutes, signed by all five of the directors, a settlement could not be bindingly made without presenting the matter to the chancery court which created the liquidating corporation, and securing its approval of the settlement. Williams v. Peoples Bank Liquidating Corp., 184 Miss. 167, 185 So. 579 (1939).

§ 81-9-63. Sale of assets to going bank.

By and with the approval of the chancellor and of the state comptroller any liquidating corporation may sell any portion or all of the assets of the bank being liquidated by such corporation to an active and operating bank, the purchase price to be in cash or on terms, or otherwise; or, the purchasing bank may be allowed to assume a percentage of the liabilities of the insolvent bank, with optional privilege to the creditors to receive cash or other property in settlement of their claims. Under this section chancellors shall have broad powers and discretion to approve plans which are for the best interests of creditors of closed banks taken as a whole.

SOURCES: Codes, 1942, § 5272; Laws, 1934, ch. 146.

Editor's Note — Section 81-1-117 abolished the office of state comptroller, and provided that the functions, duties and responsibilities would be assumed by the commissioner of banking and consumer finance.

Cross References — Application of territorial and numerical restrictions on establishment of branch banks to bank purchaser of insolvent bank, see §§ 81-7-7, 81-7-8.

Applicability of time constraints for approval of certificate of incorporation to purchasers of insolvent institutions, see § 81-3-13.

State-chartered banks having and possessing the rights, powers, privileges, immunities, duties and obligations of a national bank having its principal place of business in this state, irrespective of any conflict with the provisions of this section, see § 81-5-1(9).

Authorization for multibank holding company to acquire assets of insolvent bank, see § 81-7-19.

Sale of assets of insolvent bank by state comptroller, see § 81-9-11.

Sale of assets of insolvent bank by receiver, see § 81-9-27.

Priority of claims for payment against certain insolvent banks upon liquidation or upon execution of purchase of assets and assumption of liabilities, see § 81-9-75.

§ 81-9-65. Corporation and directors may be restrained.

On petition of any party aggrieved, filed in the depositor liquidation cause, the liquidating corporation and its directors and officers may, as in other cases, be enjoined by the chancellor from actual abuse of discretion.

SOURCES: Codes, 1942, § 5273; Laws, 1934, ch. 146.

Cross References — State-chartered banks having and possessing the rights, powers, privileges, immunities, duties and obligations of a national bank having its principal place of business in this state, irrespective of any conflict with the provisions of this section, see § 81-5-1(9).

§ 81-9-67. Liquidating corporations may apply to court for directions.

Liquidating corporations shall have the power to apply in vacation to the chancellor for orders and directions concerning the liquidation, and this section shall be liberally construed in favor of speedy and economical liquidations.

SOURCES: Codes, 1942, § 5274; Laws, 1934, ch. 146.

Cross References — State-chartered banks having and possessing the rights, powers, privileges, immunities, duties and obligations of a national bank having its principal place of business in this state, irrespective of any conflict with the provisions of this section, see § 81-5-1(9).

§ 81-9-69. Records and inspection thereof.

Full and complete minutes shall be kept of all proceedings of the directors, and full and complete records and books of account shall be kept by the corporation. The directors shall have discretion to grant to parties of interest reasonable inspection and permission to take copies of all such minutes, records and books, and such reasonable inspection and right to take copies may be ordered by the chancellor in term time or vacation, upon reasonable notice to the corporation of time and place of a hearing on any petition seeking such inspection and right to take copies.

SOURCES: Codes, 1942, § 5275; Laws, 1934, ch. 146.

Cross References — State-chartered banks having and possessing the rights, powers, privileges, immunities, duties and obligations of a national bank having its principal place of business in this state, irrespective of any conflict with the provisions of this section, see § 81-5-1(9).

§ 81-9-71. Final report and dissolution of the corporation.

(1) When the affairs of the bank shall be completely liquidated, or liquidated in so far as it is practical for the directors so to do, they shall make, or cause to be made, to the chancery court of the county in which the corporation is domiciled a final report, the correctness of which shall be sworn to by at least one director of the corporation, either upon personal knowledge or upon information and belief, after a careful examination of the report. Such report shall include the gross amount of collections and the total amount of all disbursements to common creditors, depositors, or other claimants, and the amount of all dividends on hand belonging to common creditors, stockholders, or others, which for any reason have not been distributed and they shall also file as part of such report the following books and records of said corporation, to wit: The journal and the general ledger kept by the corporation and the minute book of the corporation and also the ledger showing the amount due each depositor and other creditors at the time the corporation was created and upon which dividends were paid, or such other books, set of books, or records used by or that were set up by said corporation which reveal the above enumerated facts, and if available the audit of the department of bank supervision showing all assets and liabilities of the bank in liquidation.

(2) The directors shall file a petition for their discharge and a dissolution of the corporation with their report, and the final report together with said petition shall remain on file subject to the inspection of any person interested for the time and in the manner hereinafter provided. Upon the filing of said petition and report in the chancery clerk's office in the county in which the corporation is domiciled, the clerk shall immediately notify the chancellor by registered mail of the filing of said petition and report whereupon the chancellor by order entered upon the minutes of the court shall direct the clerk of the court to have a notice published in some newspaper in the county wherein the corporation is domiciled, or if none is so published, then in some

newspaper having a general circulation therein, which notice shall state that the liquidation of the bank has been completed and that the final report of the directors and petition for their discharge and dissolution of the corporation are on file; that unless written objection is filed with the clerk of the court within forty-five (45) days from the date of the first publication of the notice, all persons shall be forever precluded from filing any claim against the bank, corporation, or the directors and officers, and from questioning any of the acts of the directors or officers except for fraud. Said notice shall be published once a week for four successive weeks.

(3) Should the directors have dividends on hand belonging to the depositors, creditors, stockholders or others which have not been distributed, the notice hereinabove referred to shall specify this fact, and shall give the name of each party who is entitled to such dividend, but it shall not be necessary to give the amount thereof. The notice shall direct that said parties call for said dividends prior to the day set for the filing of written objections, otherwise their claim thereto shall be forfeited. On the day of the final hearing if there are dividends on hand which have not been called for, the directors shall not be discharged, or the corporation dissolved, but the chancellor by order entered on the minutes of the court shall direct the directors to make distribution of such unclaimed dividends to the known depositors and creditors pro rata; provided, that in the event the known depositors and creditors have already been paid in full, such unclaimed dividends shall be distributed to the stockholders pro rata.

(4) If on the day of the final hearing there are no dividends on hand for distribution and there have been no objections filed to the discharge of the directors and the dissolution of the corporation, the chancellor shall enter an order granting the discharge of the directors and a dissolution of the corporation. If there are dividends on hand, the chancellor shall direct their distribution as above provided. Should written objections be filed to the discharge of the directors and the dissolution of the corporation within the time above provided, the chancellor shall set the matter for hearing in vacation or term time as he may deem proper, and the same shall be proceeded with as any other action in chancery. In no event shall anyone be permitted to file objections after the time specified in the notice above provided for.

(5) Should there be any dividends not called for at the expiration of forty-five (45) days from the date the chancellor orders the distribution as provided in subsection (3) hereof, the directors shall pay the same to the state comptroller who shall hold the same for parties entitled thereto for a period of one year from the date of the order of the chancellor directing the distribution. If said funds are not called for before the expiration of said period, the owners shall lose all right thereto, and the state comptroller shall pay the same, or so much thereof as remains in his hands, into the state treasury. Upon the directors making the distribution provided for in subsection (3) hereof, either by paying said funds to the parties entitled thereto, or by paying the same or a part thereof to the state comptroller, they shall report such fact to the chancellor, who shall enter his decree granting the discharge of the directors

and the dissolution of the corporation, and the court or chancellor in vacation, shall have the power and authority during the course of proceedings under this section to make all such orders as he may deem right and proper to fully carry out the purposes of this section.

(6) When the final decree of the discharge and dissolution is entered by the court or chancellor in vacation, it shall be the duty of the clerk to immediately turn over to the state comptroller all the books of the corporation which have been filed with said cause and take a receipt from said comptroller therefor and file said receipt with the papers in said cause. It shall be the duty of the state comptroller to receive said books, and receipt therefor and to file and preserve the same in his office as other bank records.

SOURCES: Codes, 1942, § 5276; Laws, 1934, ch. 146; Laws, 1942, ch. 264.

Editor's Note — Section 81-1-57 provides that wherever the words "state comptroller" or "comptroller", when referring to the office of state comptroller of banks, shall be construed to mean the commissioner of banking and consumer finance.

Section 81-1-117 abolished the office of state comptroller, and provided that the functions, duties and responsibilities would be assumed by the commissioner of banking and consumer finance.

Cross References — Application of territorial and numerical restrictions on establishment of branch banks to bank purchaser of insolvent bank, see §§ 81-7-7 and 81-7-8.

State-chartered banks having and possessing the rights, powers, privileges, immunities, duties and obligations of a national bank having its principal place of business in this state, irrespective of any conflict with the provisions of this section, see § 81-5-1(9).

Reports by receiver, see § 81-9-37.

§ 81-9-73. When Federal Deposit Insurance Corporation or any similar corporation to be appointed receiver.

Whenever the state comptroller shall apply for appointment of a receiver under the provisions of this chapter, and the deposits of such bank shall be to any extent insured by the Federal Deposit Insurance Corporation, or any similar corporation organized under the laws of the United States, and it shall appear that said corporation will accept the receivership of said bank, then it shall be mandatory upon the chancellor to appoint said Federal Deposit Insurance Corporation, or any similar corporation organized under the laws of the United States, receiver of such bank. In such event, the receivership may be conducted by the Federal Deposit Insurance Corporation or any similar corporation organized under the laws of the United States, at its option, in the proper chancery court of this state and under the provisions of this chapter applicable to other bank receivers. In all instances in which the Federal Deposit Insurance Corporation, or any similar corporation organized under the laws of the United States, shall pay any portion of the deposits of a bank in this state, it shall be fully subrogated to the position of depositors in so far as such payments are made and as equity and justice may appear.

SOURCES: Codes, 1942, § 5277; Laws, 1934, ch. 146.

Editor's Note — Section 81-1-57 provides that wherever the words "state comptroller" or "comptroller", when referring to the office of state comptroller of banks, shall be construed to mean the commissioner of banking and consumer finance.

Section 81-1-117 abolished the office of state comptroller, and provided that the functions, duties and responsibilities would be assumed by the commissioner of banking and consumer finance.

Cross References — Application of territorial and numerical restrictions on establishment of branch banks to bank purchaser of insolvent bank, see §§ 81-7-7 and 81-7-8.

State-chartered banks having and possessing the rights, powers, privileges, immunities, duties and obligations of a national bank having its principal place of business in this state, irrespective of any conflict with the provisions of this section, see § 81-5-1(9).

§ 81-9-75. Priority of claims for payment against certain insolvent banks upon liquidation or upon execution of purchase of assets and assumption of liabilities.

On liquidation of a state or private bank or on execution of a purchase of certain assets and assumption of certain liabilities of a state bank under this chapter, claims for payment against that state bank have the following priority:

(a) Obligations incurred by the Banking Commissioner, fees and assessments due to the Department of Banking and Consumer Finance, and expenses of liquidation, including any taxes due, all of which may be covered by a proper reserve of funds;

(b) Claims of depositors having an approved claim against the general liquidating account of the bank;

(c) Claims of salaried employees of the bank for salaries that are earned but unpaid at the time the bank is closed or purchased under this chapter;

(d) Claims of general creditors having an approved claim against the general liquidating account of the bank;

(e) Claims otherwise proper that were not filed within the time prescribed by this code;

(f) Approved claims of subordinated creditors; and

(g) Claims of stockholders of the bank.

SOURCES: Laws, 1994, ch. 305, § 1, eff from and after July 1, 1994.

Cross References — Liquidation of insolvent banks, see § 81-9-29.

Proof of claims, see § 81-9-31.

Liquidation of solvent banks, see § 81-9-41.

Sale of assets to going bank, see § 81-9-63.

RESEARCH REFERENCES

Am Jur. 10 Am. Jur. 2d, Banks and Financial Institutions §§ 1117 et seq.

CJS. 9 C.J.S., Banks and Banking §§ 188, 197-203, 416.

CHAPTER 11

Savings and Loan Associations
[Repealed]

Special Note to Chapter

Chapter 445, Laws of 1977, repealed sections 81-11-1 through 81-11-89 of Chapter 11 of Title 81, and created new provisions governing savings associations. By the terms of section 67 of Chapter 445, Laws of 1977, that chapter became effective and was in force from and after July 1, 1977. The new provisions created by Chapter 445, Laws of 1977, governing savings associations, have been codified as new Chapter 12 of Title 81. See infra. The following table shows where matter similar to that appearing in the repealed sections of Chapter 11 may be found in new Chapter 12.

Repealed	New
81-11-3	81-12-3
81-11-5	81-12-77
81-11-7	81-12-25
81-11-9	81-12-25, 81-12-29
81-11-11	81-12-27
81-11-13	81-12-33
81-11-15	81-12-93
81-11-17	81-12-41
81-11-19	81-12-5
81-11-21	81-12-7, 81-12-9
81-11-29	81-12-79, 81-12-177
81-11-31	81-12-155 thru 81-12-165
81-11-35	81-12-113
81-11-37	81-12-127
81-11-39	81-12-151, 81-12-153
81-11-41	81-12-181, 81-12-183, 81-12-185
81-11-43	81-12-53 thru 81-12-63
81-11-45	81-12-69
81-11-47	81-12-49
81-11-49	81-12-187, 81-12-189
81-11-51	81-12-193
81-11-57	81-12-195
81-11-59	81-12-135
81-11-61	81-12-137
81-11-63	81-12-141
81-11-65	81-12-139
81-11-67	81-12-133
81-11-69	81-12-147
81-11-71	81-12-143
81-11-73	81-12-173
81-11-75	81-12-169
81-11-79	81-12-191
81-11-81	81-12-85

§§ 81-11-1 through 81-11-89. Repealed.

Repealed by Laws, 1977, ch. 445, § 66, eff from and after July 1, 1977.

§ 81-11-1. [Codes, 1942, § 5288-01; Laws, 1962, ch. 228, § 1]

§ 81-11-3. [Codes, 1942, § 5288-02; Laws, 1962, ch. 228, § 2; 1968, ch. 272, § 1]

§ 81-11-5. [Codes, 1942, § 5288-03; Laws, 1962, ch. 228, § 3; 1968, ch. 272, § 2; 1976, 1st Ex Sess, ch. 4, § 3]

§ 81-11-7. [Codes, 1942, § 5288-04; Laws, 1962, ch. 228, § 4(a)]

§ 81-11-9. [Codes, 1942, § 5288-05; Laws, 1962, ch. 228, § 4(b)]

§ 81-11-11. [Codes, 1942, § 5288-06; Laws, 1962, ch. 228, § 5]

§ 81-11-13. [Codes, 1942, § 5288-07; Laws, 1962, ch. 228, § 6(a)]

§ 81-11-15. [Codes, 1942, § 5288-08; Laws, 1962, ch. 228, § 6(b)]

§ 81-11-17. [Codes, 1942, § 5288-09; Laws, 1962, ch. 228, § 6(c)]

§ 81-11-19. [Codes, 1942, § 5288-10; Laws, 1962, ch. 228, § 6(d)]

§ 81-11-21. [Codes, 1942, § 5288-11; Laws, 1962, ch. 228, § 6(e); 1971, ch. 405, § 1]

§ 81-11-23. [Codes, 1942, § 5288-12; Laws, 1962, ch. 228, § 6(f-k)]

§ 81-11-25. [Codes, 1942, § 5288-13; Laws, 1962, ch. 228, § 7]

§ 81-11-27. [Codes, 1942, § 5288-13.5; Laws, 1964, ch. 490]

§ 81-11-29. [Codes, 1942, § 5288-14; Laws, 1962, ch. 228, § 8]

§ 81-11-31. [Codes, 1942, § 5288-15; Laws, 1962, ch. 228, § 9; 1968, ch. 272, § 3; 1974, ch. 416]

§ 81-11-33. [Codes, 1942, § 5288-16; Laws, 1962, ch. 228, § 10; 1971, ch. 337, § 1]

§ 81-11-35. [Codes, 1942, § 5288-17; Laws, 1962, ch. 228, § 11; 1971, ch. 404, § 1]

§ 81-11-37. [Codes, 1942, § 5288-18; Laws, 1962, ch. 228, § 12]

§ 81-11-39. [Codes, 1942, § 5288-19; Laws, 1962, ch. 228, § 13]

§ 81-11-41. [Codes, 1942, § 5288-20; Laws, 1962, ch. 228, § 14]

§ 81-11-43. [Codes, 1942, § 5288-21; Laws, 1962, ch. 228, § 15]

§ 81-11-45. [Codes, 1942, § 5288-22; Laws, 1962, ch. 228, § 16]

§ 81-11-47. [Codes, 1942, § 5288-23; Laws, 1962, ch. 228, § 17; 1973, ch. 363, § 1]

§ 81-11-49. [Codes, 1942, § 5288-24; Laws, 1962, ch. 228, § 18]

§ 81-11-51. [Codes, 1942, § 5288-25; Laws, 1962, ch. 228, § 19; 1968, ch. 272, § 4; 1972, ch. 404, § 1]

§ 81-11-53. [Codes, 1942, § 5288-26; Laws, 1962, ch. 228, § 20; 1972, ch. 404, § 2]

§ 81-11-55. [Codes, 1942, § 5288-27; Laws, 1962, ch. 228, § 21]

§ 81-11-57. [Codes, 1942, § 5288-28; Laws, 1962, ch. 228, § 22(a)]

§ 81-11-59. [Codes, 1942, § 5288-29; Laws, 1962, ch. 228, § 22(b)]

§ 81-11-61. [Codes, 1942, § 5288-30; Laws, 1962, ch. 228, § 22(c)]

§ 81-11-63. [Codes, 1942, § 5288-31; Laws, 1962, ch. 228, § 22(d)]

§ 81-11-65. [Codes, 1942, § 5288-32; Laws, 1962, ch. 228, § 22(e)]

§ 81-11-67. [Codes, 1942, § 5288-33; Laws, 1962, ch. 228, § 22(f)]
§ 81-11-69. [Codes, 1942, § 5288-34; Laws, 1962, ch. 228, § 22(g)]
§ 81-11-71. [Codes, 1942, § 5288-35; Laws, 1962, ch. 228, § 22(h); Laws, 1971, ch. 415, § 1]
§ 81-11-73. [Codes, 1942, § 5288-36; Laws, 1962, ch. 228, § 22(i)]
§ 81-11-75. [Codes, 1942, § 5288-37; Laws, 1962, ch. 228, § 22(j)]
§ 81-11-77. [Codes, 1942, § 5288-38; Laws, 1962, ch. 228, § 23]
§ 81-11-79. [Codes, 1942, § 5288-39; Laws, 1962, ch. 228, § 24]
§ 81-11-81. [Codes, 1942, § 5288-40; Laws, 1962, ch. 228, § 25; Laws, 1976, 1st Ex. Sess., ch. 4, § 1]
§ 81-11-83. [Codes, 1942, § 5288-41; Laws, 1962, ch. 228, § 26]
§ 81-11-85. [Codes, 1942, § 5288-12; Laws, 1962, ch. 228, § 27]
§ 81-11-87. [Codes, 1942, § 5288-13; Laws, 1962, ch. 228, § 28]
§ 81-11-89. [Codes, 1942, § 5288-14; Laws, 1962, ch. 228, § 29]

§§ 81-11-91 through 81-11-95. Repealed.

Repealed by Laws, 1997, ch. 542, § 12-14, eff from and after passage (approved April 10, 1997).
§ 81-11-91. [Laws, 1976, 1st Ex Sess, ch. 4, § 2; Laws 1977, ch. 301]
§ 81-11-93. [Laws, 1976, 1st Ex Sess, ch. 4, § 5]
§ 81-11-95. [Laws, 1976, 1st Ex Sess, ch. 4, § 4]

Editor's Note — Former § 81-11-91 provided for the appointment, powers and duties of a conservator for savings associations not having deposits insured by a federal or state agency.

Former § 81-11-93 provided restrictions on transactions in shares and deposits of savings associations under the jurisdiction of a conservator.

Former § 81-11-95 defined terms utilized in the provisions of law governing the appointment of a conservator for savings associations not having deposits insured by a federal or state agency.

CHAPTER 12

Savings Associations Law

Sec.
81-12-1. Citation of chapter.
81-12-3. Definitions.
81-12-4. Private corporation laws; application to savings and loan associations.
81-12-5. Repealed.
81-12-6. Department of Savings Institutions and Savings Institution Board abolished; transfer of powers, duties, etc. to other agencies.
81-12-7. Rights, powers, privileges and duties of board.
81-12-9. Determinations of commissioner final; judicial review.
81-12-11. Duties of department.
81-12-13 and 81-12-15. Repealed.
81-12-17. Interests in savings institutions prohibited; confidentiality of information.
81-12-19. Repealed.
81-12-21. Transfer of books and records; continuation of actions.
81-12-23. Commissioner; supervisory and enforcement powers; approvals, orders and instructions.
81-12-24. Removal of officers and directors.
81-12-25. Incorporation; petition; fee; articles; bylaws; exhibits.
81-12-27. Incorporation; examination and investigation of petition.
81-12-29. Incorporation; notice of petition; filing notice of opposition; hearing.
81-12-31. Incorporation; meeting of board to consider petition; cross-examination of and compelling attendance of witnesses; disposition of petition.
81-12-33. Incorporation; proceedings upon approval of incorporation; commencement of corporate existence.
81-12-35. Organization of mutual association; subscription by incorporators; bond; expense fund; organization meeting.
81-12-37. Capital stock association; minimum required capital; paid-in surplus; determining and maintaining adequate net worth.
81-12-39. Capital stock association; statement of compliance; issuance of certificate of authorization; organization meeting.
81-12-41. Name of association; enjoining violations; penalty.
81-12-43. Change of name or location of home office; hearing.
81-12-45. Forfeiture of corporate existence; new corporations; extension of time within which to commence business.
81-12-47. Insurance accounts; liquidation of noncomplying existing associations; false representation as to insurance; penalty; injunction.
81-12-49. Powers of associations.
81-12-51. Additional powers of capital stock associations.
81-12-53. Conversion of association organized under state law into federal association.
81-12-55. Conversion of federal association into association organized under state law.
81-12-57. Conversion of association organized under state law or of federal association into capital stock association.
81-12-59. Conversion of association organized under state law or of federal association into capital stock association; hearing on plan of conversion; notice; costs.
81-12-61. Conversion of capital stock association organized under state law into federal association.
81-12-63. Conversion prohibited; exceptions.

81-12-65. Reorganization, merger and consolidation of associations.
81-12-66. Ownership by holding company.
81-12-67. Acquisition of controlling interest in capital stock association; certificate of approval; definitions; restrictions on ownership or control; reports; examinations.
81-12-69. Termination of association; liquidation of assets; surrender of charter.
81-12-71. Annual meeting of members of association; voting; quorum.
81-12-73. Annual meeting of stockholders of capital stock associations; notice; voting; quorum.
81-12-75. Membership fees prohibited.
81-12-77. Inspection of books and records of association; confidential nature of certain books and records; access by members; procedure for members to communicate with other members with reference to questions to be presented at annual meeting.
81-12-79. Call reports.
81-12-81. Board of directors to direct business of association; number and qualifications of members; oath; procedure for filling vacancies.
81-12-83. Board of directors to manage business and exercise powers of capital stock association; election of members; term of office; qualifications; oath; vacancies.
81-12-85. Bonding of association's officers, attorneys, employees, agents and directors.
81-12-87. Fiduciary relationship of directors and officers; disclosure of personal interests; restrictions governing conduct; penalty.
81-12-89. Deposit of association funds; approval by directors.
81-12-91. Indemnification of director, officer or employee for expenses of action to which he is made a party by reason of his position.
81-12-93. Management contracts.
81-12-95. Records; minutes of meetings; business transactions.
81-12-97. Records; branch offices; agents.
81-12-99. Records; maintenance by means of data processing services.
81-12-101. Records; forms and accounting principles; closing of books; description of assets.
81-12-103. Records; overvaluation of assets.
81-12-105. Records; real estate investments; appraisal.
81-12-107. Records; loan and investment.
81-12-109. Records; membership and stockholder.
81-12-111. Records; reproduction by photostatic, photographic or microfilming process.
81-12-113. Reserves.
81-12-115. Savings liability of association to equal aggregate amount of savings accounts plus earnings; additions to accounts; responsibility of members for losses; assessment of accounts; declaration of earnings; preferences.
81-12-117. Savings accounts.
81-12-119. Savings accounts; execution of contract by holder.
81-12-121. Savings accounts; evidence of ownership.
81-12-123. Savings accounts; lost or destroyed account books or certificates.
81-12-125. Savings accounts; inducements to open.
81-12-127. Savings accounts; adverse claims to accounts.
81-12-129. Savings plans at educational institutions.
81-12-131. Payroll savings plans.
81-12-133. Attorneys authorized to make withdrawals; revocation of authority.
81-12-135. Savings accounts issued to minors or persons under disability; payment of withdrawals; powers of parent or guardian; withdrawals on death of holder.

81-12-137. Accounts in the name of two (2) or more persons.

81-12-139. Accounts of administrators, executors, guardians, trustees, and other fiduciaries.

81-12-141. Accounts of deceased nonresidents.

81-12-143. Payments to successors without administration.

81-12-145. Accounts payable at death.

81-12-147. Savings accounts as legal investments and as security for bonds.

81-12-149. Payment of earnings on savings accounts.

81-12-151. Withdrawals by savings account holders.

81-12-153. Redemptions.

81-12-155. Securities in which associations may invest.

81-12-157. Association may not invest in security or grant loan when liquid assets are less than five percent of savings liability.

81-12-159. Loans and other investments in which associations may invest.

81-12-161. Real estate loans to be written on approved loan plans.

81-12-163. Borrower's right to select attorney and obtain insurance in connection with loan; rules and regulations governing fire, casualty and title insurance.

81-12-165. Payment of expenses in connection with closing of loan; borrower to pay only his own attorney's fee; notice of right to select attorney; right of association to require title insurance.

81-12-167. Late payment charges.

81-12-169. Reinstatement of loan prior to foreclosure sale.

81-12-171. Right of association to deal with successor in interest of real estate securing loan.

81-12-173. Right to act to avoid loss.

81-12-175. Branch offices.

81-12-176. Branch offices; additional types of offices.

81-12-177. Annual report; annual audit; additional reports and examinations; access to books and papers.

81-12-178. Public availability of federal evaluations of banks.

81-12-179. Order of discontinuance of violation; enforcement in chancery court.

81-12-181. Appointment of conservator; powers and privileges; directors, officers and employees to remain; effect on deposits, withdrawals and loans.

81-12-183. Appointment of receiver; powers of receiver; directors, officers and attorneys authorized to contest appointment; surrender of charter.

81-12-184. Supervisory merger.

81-12-185. Restrictions on appointment of conservator or receiver.

81-12-187. Foreign associations; definition; conditions for doing business in state; injunction against foreign association doing business without approval.

81-12-189. Foreign associations; activities of federal associations and certain foreign associations not constituting doing of business within state; subjectivity to suit.

81-12-191. Federal associations domiciled in state.

81-12-193. Fees.

81-12-195. Offering and sale of savings accounts exempt from securities regulations.

81-12-197. Acknowledgment or proof of written instrument in which association interested; membership or employee status of public officer taking as affecting validity.

81-12-199. Untrue, false and malicious statements calculated to injure reputation or business of certain savings associations; penalty for making.

81-12-201. Advertising for deposits prohibited; exception as to certain state and federal banks, credit unions and associations.

81-12-203. Applicability of chapter to previously incorporated savings associations; enforceability of obligations of such associations.
81-12-205. Appeal from final rule, regulation or order of commissioner or board.
81-12-207. Solicitation of deposits by association or its representatives without complying with provisions of chapter; penalty.
81-12-209. Repealed.
81-12-211. Unsafe or unfair practice; notice of charges.
81-12-213. Association in violation of provisions or cease and desist order; civil penalty.
81-12-215. Director, officer or employee violation of provisions or cease and desist order; civil penalty.
81-12-217. Commissioner to issue supervisory control for association.
81-12-219. Appeal of cease and desist order.
81-12-221. Reimbursement of fines or penalties.
81-12-223. Cumulative fines and penalties.
81-12-225. Credit allowed; discretion of commissioner.
81-12-227. Amount of liability to association for loans.
81-12-229. Commissioner to furnish copy of call reports; fee; failure or refusal; misdemeanor.

§ 81-12-1. Citation of chapter.

This chapter shall be cited as the "Savings Association Law."

SOURCES: Laws, 1977, ch. 445, § 1; reenacted, Laws, 1982, ch. 301, § 1; Laws, 1990 Ex Sess, ch. 52, § 1; Laws, 1993, ch. 441, § 1; Laws, 1994, ch. 622, § 37; reenacted without change, Laws, 1997, ch. 496, § 1; reenacted without change, Laws, 2001, ch. 488, § 1, eff from and after July 1, 2001.

Cross References — State privilege tax on savings associations, see § 27-17-9.
Savings Bank Law, see §§ 81-14-1 et seq.
Companies authorized to act as fiduciaries, see § 81-27-1.101.

RESEARCH REFERENCES

ALR. Bank's liability for breach of implied contract of good faith and fair dealing. 55 A.L.R.4th 1026.

Am Jur. 13 Am. Jur. 2d, Building and Loan Associations §§ 4-7, 18.

CJS. 12 C.J.S., Building and Loan Associations, Savings and Loan Associations, and Credit Unions §§ 1 et seq.

§ 81-12-3. Definitions.

When used in this chapter, the following words and phrases shall have the following meanings, except to the extent that any such word or phrase specifically is qualified by its context:

(a) "Association" means a savings association or savings and loan association subject to provisions of this chapter.

(b) "Board" means the State Board of Banking Review.

(c) "Capital stock association" means an association organized pursuant to Sections 81-12-37 and 81-12-39.

(d) "Commissioner" means the Commissioner of Banking and Consumer Finance.

(e) "Community" means a centralized area or locality in which the inhabitants have common residential, social or business interests. The term is not restricted to a municipal corporation or other political subdivision; a community need not be limited by lines and boundaries. A city, town or other governmental unit, either incorporated or unincorporated, may constitute one (1) community; a large, populous area under one or more forms of government may comprise one (1) or several communities.

(f) "Department" means the Department of Banking and Consumer Finance.

(g) "Earnings" means that part of the "sources available for payment of earnings" as defined herein which is declared payable on savings accounts from time to time by the board of directors. Earnings also may be referred to as "interest."

(h) "Financial institution" means a thrift institution, commercial bank or trust company.

(i) "Impaired condition" means a condition in which the assets of an association in the aggregate do not have a fair value equal to the aggregate amount of liabilities of the association to its creditors, including its members and all other persons, or a condition in which the association shall be unable to pay when due current withdrawal requests by its members or depositors.

(j) "Insured association" means an association, the savings accounts of which are insured wholly or in part in accordance with the provisions of this chapter.

(k) "Liquid assets" means cash on hand, cash on deposit in federal home loan banks, in state banks performing similar reserve functions, or in commercial banks insured by the Federal Deposit Insurance Corporation, which is not pledged as security for indebtedness; except that any deposits in a bank under the control or in the possession of any supervisory authority shall not be considered as liquid assets; loans immediately available or federal funds on a day-to-day basis to a bank insured by the Federal Deposit Insurance Corporation; and direct obligations of, or obligations which are fully guaranteed as to principal and interest by, the United States or agencies or instrumentalities thereof or this state.

(*l*) "Member" means a person holding a savings account of a mutual association, and a person borrowing from or assuming or obligated upon a loan or interest therein held by an association, or purchasing property securing a loan or interest therein held by an association, and any other person obligated to an association. A joint and survivorship relationship, whether of savers or borrowers, constitutes a single membership. This definition shall not apply to associations organized under Sections 81-12-37 and 81-12-39 as a capital stock association.

(m) "Mutual association" means an association composed of members which is not a capital stock association as authorized by this chapter.

(n) "Net income" means gross revenues for an accounting period less all expenses paid or incurred, taxes and losses sustained as shall not have been charged to reserves pursuant to the provisions of this chapter.

(o) "Net worth" means the sum of all reserve accounts (except specific or valuation reserves), retained earnings, capital stock, any other nonwithdrawable accounts of an association, and the principal amount of any subordinated debt securities to the extent authorized by the commissioner.

(p) "One borrower" means: (i) any person or entity which is or which, upon the making of a loan, will become obligor on a real estate loan; (ii) nominees of such obligor; (iii) all persons, trusts, partnerships, syndicates and corporations of which such obligor is a nominee or a beneficiary, partner, member or record or beneficial stockholder owning ten percent (10%) or more of the capital stock; and (iv) if such obligor is a trust, partnership, syndicate or corporation, all trusts, partnerships, syndicates and corporations of which any beneficiary, partner, member or record or beneficial stockholder owning ten percent (10%) or more of the capital stock, is also a beneficiary, partner, member or record or beneficial stockholder owning ten percent (10%) or more of the capital stock of such obligor. A guarantor or endorser shall be considered an obligor.

(q) "Person" means any natural or artificial being, including any legal entity.

(r) "Primary lending area" means this state and any county (or parish) of another state of which the county seat is located not more than seventy-five (75) air miles from the home or a branch office of an association.

(s) "Real estate loan" means any loan or other obligation secured by a first lien on real estate in any state held in fee or in a leasehold or subleasehold extending or renewable automatically or at the option of the holder (or at the option of the association) for a period of at least ten (10) years beyond the maturity or date scheduled for a final principal payment of such loan or obligation, or any transaction out of which a first lien or claim is created against such real estate, including, inter alia, the purchase of such real estate in fee by an association and the concurrent or immediate sale thereof on installment contract.

(t) "Savings account" means that part of the savings liability of the association which is credited to the account of the holder thereof. A savings account also may be referred to as a deposit.

(u) "Savings institution" means either an association or a savings bank.

(v) "Savings liability" means the aggregate amount of savings accounts of members and depositors, including earnings credited to such accounts, less redemptions and withdrawals.

(w) "Service organization" means an organization, substantially all the activities of which consist of originating, purchasing, selling and servicing loans upon real estate and participating interests therein, or clerical, bookkeeping, accounting, statistical or similar functions performed primarily for associations, and such other activities as the commissioner, by regulation, may approve, which are directly related to real estate development and the servicing of real estate loans.

(x) "Sources available for payment of earnings" means net income for an accounting period less amounts transferred to reserves as provided in or permitted by this chapter, plus any balance of undivided profits from preceding accounting periods, or from surplus.

(y) "Thrift institution" means a savings bank, bank for savings, a homestead association, a savings and loan association, a building and loan association, a federal savings association, a federal savings and loan association, and a supervised thrift and residential financing institution of a substantially similar nature, but shall not include a banking association organized under the laws of the United States or a bank organized under the laws of this state or any other state.

(z) "Withdrawal value" means the amount credited to a savings account of a member, less lawful deductions therefrom, as contained in the records of the association.

SOURCES: Laws, 1977, ch. 445, § 2; reenacted, Laws, 1982, ch. 301, § 2; Laws, 1990 Ex Sess, ch. 52, § 2; Laws, 1992, ch. 489, § 106; Laws, 1993, ch. 441, § 2; reenacted and amended, Laws, 1994, ch. 622, § 38; reenacted without change, Laws, 1997, ch. 496, § 2; reenacted without change, Laws, 2001, ch. 488, § 2, eff from and after July 1, 2001.

Cross References — Multistate, state and limited liability trust institutions, see § 81-27-1.001 et seq.

JUDICIAL DECISIONS

1.-10. [Reserved for future use.]
11. Under former § 81-11-3.

1.-10. [Reserved for future use.]

11. Under former § 81-11-3.

The placing of a savings and loan association under the savings and loan law did not in any way change or impair its corporate powers or alter its characteristics as a stock company. Hamblett v. Board of Sav. & Loan Assn's, 472 F. Supp. 158 (N.D. Miss. 1979).

RESEARCH REFERENCES

Am Jur. 13 Am. Jur. 2d, Building and Loan Associations § 4.

CJS. 12 C.J.S., Building and Loan Associations, Savings and Loan Associations, and Credit Unions § 2.

§ 81-12-4. Private corporation laws; application to savings and loan associations.

All the provisions of law relating to private corporations operating in this state which are not inconsistent with this chapter, or with the proper business of depository institutions, shall be applicable to all savings and loan associations.

SOURCES: Laws, 1998, ch. 392, § 2; reenacted without change, Laws, 2001, ch. 488, § 3, eff from and after July 1, 2001.

§ 81-12-5. Repealed.

Repealed by Laws of 1994, ch. 622, § 162, eff from and after July 1, 1994.

[Laws, 1977, ch. 445; Laws, 1980, ch. 560, § 29; reenacted, Laws, 1982, ch. 301, § 3; 1990 Ex Sess, ch. 52, § 3; Laws, 1992, ch. 489, § 107; Laws, 1993, ch. 441, § 3]

Editor's Note — Former § 81-12-5 was entitled: Savings Institution Board; composition, qualification and term of members; compensation.

§ 81-12-6. Department of Savings Institutions and Savings Institution Board abolished; transfer of powers, duties, etc. to other agencies.

The Department of Savings Institutions and the Savings Institution Board are abolished, and all of the powers, duties, property, contractual rights and obligations and unexpended funds of that department and board shall be transferred to the Department of Banking and Consumer Finance, Commissioner of Banking and Consumer Finance and State Board of Banking Review as provided in this chapter.

SOURCES: Laws, 1994, ch. 622, § 1; reenacted without change, Laws, 1997, ch. 496, § 3; reenacted without change, Laws, 2001, ch. 488, § 4, eff from and after July 1, 2001.

§ 81-12-7. Rights, powers, privileges and duties of board.

The commissioner shall have such rights, powers and privileges and shall be subject to such duties as are provided by this chapter, and shall make such other provisions for the orderly conduct of the business of the department under this chapter as he deems necessary. The commissioner shall have the authority and duty to make, after notice and hearing, such reasonable rules, regulations and orders as required by this chapter and as may be necessary from time to time to administer and enforce this chapter. The commissioner shall give at least thirty (30) days' notice of any proposed rule or regulation by publication not less than one (1) time in a newspaper having statewide circulation and, in addition, shall give such notice of the proposed rule or regulation by United States mail, postage prepaid, to each thrift institution in this state and to such others as he deems necessary or advisable and shall file such notice in his office. Any savings institution may propose rules or regulations for consideration by the commissioner. The commissioner shall maintain in his office permanent records of his hearings and decisions. Notice of the adoption of any rule or regulation shall be sent by United States mail, postage prepaid, to each thrift institution within ten (10) days of its adoption.

SOURCES: Laws, 1977, ch. 445, § 3 (4); reenacted, Laws, 1982, ch. 301, § 4; Laws, 1990 Ex Sess, ch. 52, § 4; Laws, 1992, ch. 489, § 108; Laws, 1993, ch. 441, § 4; reenacted and amended, Laws, 1994, ch. 622, § 39; reenacted

without change, Laws, 1997, ch. 496, § 4; reenacted without change, Laws, 2001, ch. 488, § 5, eff from and after July 1, 2001.

Cross References — Regulation of advertising, see § 81-12-201.

JUDICIAL DECISIONS

1.-10. [Reserved for future use.]
11. Under former § 81-11-23.

1.-10. [Reserved for future use.]

11. Under former § 81-11-23.

In granting or denying the right to establish a savings and loan association or a branch office, the board exercises a licensing power which is essentially a legislative function, so that the scope of judicial review in such cases is to determine whether the order granting or denying the license is supported by substantial evidence, is arbitrary or capricious, is beyond the board's power, or violates some constitutional or statutory right of an interested party. Bankers Trust Sav. & Loan Ass'n v. Bank of Winona, 243 So. 2d 415 (Miss. 1971).

A state chartered savings and loan association, by substantial compliance with the provisions of the former Code 1942, § 5310, obtained a charter amendment, which became effective prior to the effective date of Code 1942, §§ 5288-01 et seq., authorizing it to move its principal office or place of business from Columbus to Oxford. North Miss. Sav. & Loan Ass'n v. Confederate States Sav. & Loan Ass'n, 250 Miss. 463, 166 So. 2d 119 (1964).

The right given to a state chartered savings and loan association by Code 1942, § 5319, prior to the 1962 amendment, to choose or elect to maintain an office in the county of its domicil was one which the Board of Savings and Loan Associations could not impair or modify in a proceeding to prevent the savings and loan association from changing the location of its home office from one city to another within the state. North Miss. Sav. & Loan Ass'n v. Confederate States Sav. & Loan Ass'n, 250 Miss. 463, 166 So. 2d 119 (1964).

Since the rights vested in a state chartered savings and loan association by virtue of its charter amendment, changing its domicil from Columbus to Oxford, including the right to establish and maintain an office in Oxford, were rights created prior to the effective date of Code 1942, §§ 5288-01 et seq., the Board of Savings and Loan Associations could not precipitately annul or modify such rights in view of Code 1942, § 5288-38. North Miss. Sav. & Loan Ass'n v. Confederate States Sav. & Loan Ass'n, 250 Miss. 463, 166 So. 2d 119 (1964).

A savings and loan association seeking to prevent another savings and loan association from changing its home office from one city to another within the state could not, in that proceeding, attack the validity or legality of the stockholders' meeting at which the charter amendment, authorizing the other savings and loan association to make the change of location, was approved by its stockholders. North Miss. Sav. & Loan Ass'n v. Confederate States Sav. & Loan Ass'n, 250 Miss. 463, 166 So. 2d 119 (1964).

§ 81-12-9. Determinations of commissioner final; judicial review.

The determination by the commissioner upon any matter decided by him shall be final, subject to review by the courts as provided herein.

SOURCES: Laws, 1977, ch. 445, § 3 (5); reenacted, Laws, 1982, ch. 301, § 5; Laws, 1990 Ex Sess, ch. 52, § 5; Laws, 1993, ch. 441, § 5; reenacted and amended, Laws, 1994, ch. 622, § 40; reenacted without change, Laws, 1997,

ch. 496, § 5; reenacted without change, Laws, 2001, ch. 488, § 6, eff from and after July 1, 2001.

Cross References — Appeal of order temporarily removing officer or director, see § 81-12-24.

§ 81-12-11. Duties of department.

The department is charged with the execution of all laws relating to institutions carrying on a savings and loan business in this state.

SOURCES: Laws, 1977, ch. 445, § 4 (1, 2); reenacted, 1982, ch. 301, § 6; Laws, 1983, ch. 536, § 7; Laws, 1990 Ex Sess, ch. 52, § 6; Laws, 1992, ch. 489, § 109; Laws, 1993, ch. 441, § 6; reenacted and amended, Laws, 1994, ch. 622, § 41; reenacted without change, Laws, 1997, ch. 496, § 6; reenacted without change, Laws, 2001, ch. 488, § 7, eff from and after July 1, 2001.

§§ 81-12-13 and 81-12-15. Repealed.

Repealed by Laws, 1994, ch. 622, § 162, eff from and after July 1, 1994.

§ 81-12-13. [Laws, 1977, ch. 445, § 4 (3, 4); 1982, chs. 301, § 7, 331, § 1; 1990 Ex Sess, ch. 52, § 7; 1992, ch. 489, § 110; 1993, ch. 441, § 7]

§ 81-12-15. [Laws, 1977, ch. 445, § 4 (5); reenacted, 1982, ch. 301, § 8; 1990 Ex Sess, ch. 52, § 8; 1992, ch. 489, § 111; 1993, ch. 441, § 8]

Editor's Note — Former § 81-12-13 was entitled: Examiners; bonding requirements of commissioner, assistant commissioner and examiners.

Former § 81-12-15 was entitled: Appointment of secretary, other employees and assistant commissioner.

§ 81-12-17. Interests in savings institutions prohibited; confidentiality of information.

(1) The commissioner, deputy commissioner and examiners shall not be interested in a savings institution, directly or indirectly, either as creditor (except that each may be a savings account holder and receive earnings thereon), director, officer, employee, borrower (except that each may be a borrower as to a single home in which he actually resides or has resided), trustee or attorney, nor shall any one (1) of them receive, directly or indirectly, any payment, compensation or gratuity from any savings institution.

(2) The commissioner, examiners, all employees of the department and members of the board shall not divulge any information acquired by them in the discharge of their duties as prescribed by this chapter, except insofar as the same may be rendered necessary by law or under order of court; however, the commissioner may furnish information as to the condition of any savings institution to the appropriate federal regulatory authority, any federal home loan bank, the board, or the board of directors of the affected savings institution, and the commissioner may provide to members of the public the information authorized under Section 81-12-178 without being in violation of this subsection.

SOURCES: Laws, 1977, ch. 445, § 4 (6-8); reenacted, 1982, ch. 301, § 9; Laws, 1990 Ex Sess, ch. 52, § 9; Laws, 1992, ch. 489, § 112; reenacted and amended, 1993, ch. 441, § 9; Laws, 1994, ch. 622, § 42; reenacted without change, Laws, 1997, ch. 496, § 7; reenacted without change, Laws, 2001, ch. 488, § 8, eff from and after July 1, 2001.

§ 81-12-19. Repealed.

Repealed by Laws, 1994, ch. 622, § 162, eff from and after July 1, 1994.

[Laws, 1977, ch. 445, § 4 (9); reenacted, 1982, ch. 301, § 10; 1990 Ex Sess, ch. 52, § 10; 1992, ch. 489, § 113; 1993, ch. 441, § 10]

Editor's Note — Former § 81-12-19 was entitled: Seal of commissioner.

§ 81-12-21. Transfer of books and records; continuation of actions.

(1) Within sixty (60) days after July 1, 1977, the funds, books, records, documents, equipment, and supplies of every such office and officer created or appointed by Chapter 11, Title 81, Mississippi Code of 1972, shall be transferred, pursuant to orders of the Governor, to the office of the commissioner.

(2) All actions or proceedings heretofore instituted by any officer or officers charged with the supervision of such associations other than actions or proceedings by the conservator appointed pursuant to Section 81-11-91, shall be continued in the name of the commissioner in such manner as he may direct.

SOURCES: Laws, 1977, ch. 445, § 4 (10,11); reenacted, 1982, ch. 301, § 11; Laws, 1990 Ex Sess, ch. 52, § 11; Laws, 1993, ch. 441, § 11; Laws, 1994, ch. 622, § 43; reenacted without change, Laws, 1997, ch. 496, § 8; reenacted without change, Laws, 2001, ch. 488, § 9, eff from and after July 1, 2001.

Editor's Note — Section 81-11-91 referred to in (2) was repealed by Laws, 1997, ch. 542, § 12, eff from and after passage (approved April 10, 1997).

§ 81-12-23. Commissioner; supervisory and enforcement powers; approvals, orders and instructions.

(1) The commissioner shall have general supervision over all associations and corporations which are subject to the provisions of this chapter. He shall enforce the provisions of this chapter by use of the powers herein conferred; and he is hereby vested with the authority to require such associations and corporations to correct violations of this chapter. Upon a finding that it is necessary and appropriate to further the objective of this chapter, the commissioner may order that improper entries found on the books and records of an association be corrected.

(2) Every approval by the commissioner or the board given pursuant to the provisions of this chapter and every communication having the effect of an order or instruction to any association shall be in writing signed by the commissioner under seal and shall be sent by United States mail, postage

prepaid, to the association affected thereby, addressed to the president thereof at the home office of the association.

SOURCES: Laws, 1977, ch. 455, § 5; Laws, 1982, chs. 301, § 12; 331, § 2; reenacted, 1990 Ex Sess, ch. 52, § 12; Laws, 1993, ch. 441, § 12; Laws, 1994, ch. 622, § 44; reenacted without change, Laws, 1997, ch. 496, § 9; reenacted without change, Laws, 2001, ch. 488, § 10, eff from and after July 1, 2001.

§ 81-12-24. Removal of officers and directors.

(1) If, in the commissioner's opinion, after an examination, audit, or investigation, it is determined that any director or officer or any employee or controlling stockholder of any association has knowingly participated in or consented to any violation of this chapter, or any other law, rule, regulation or order, or any repeated violation of or failure to comply with any association's bylaws, and that as a result, a situation exists requiring immediate corrective action, the commissioner shall give notice to the board of directors of the association setting forth the violations and the remedies for same. Failure of the board of directors to comply with the requirements of the commissioner within ten (10) days from the date of the notice shall render the board of directors in default thereupon. Upon the expiration of such ten (10) days and upon continuation of such noncompliance and default, the commissioner may issue an order temporarily removing such person or persons cited for improper conduct as above described pending a hearing before the commissioner. In regard to a controlling stockholder, the commissioner may order the stockholder to place all his voting stock in a voting trust, the trustee of the voting trust to be designated by the commissioner. Any temporary order of removal shall state its duration on its face and the words "Temporary Order of Removal" and shall be effective upon issuance for a period of thirty (30) days and may be extended once upon written notice by the commissioner for an additional period of fifteen (15) days. A hearing upon such "Temporary Order of Removal" shall be held by the commissioner within the thirty-day period, or any extension thereof, upon not less than fifteen (15) days' notice to the removed person or persons by certified United States mail, restricted delivery, at which hearing the commissioner may dissolve the temporary order or make the same permanent. No removed person or persons shall receive any salary, compensation or remuneration from the association as an officer or director after the order is made permanent. Any temporary order of removal by the commissioner shall not be subject to judicial review in any form. Any final order of the commissioner may be appealed as provided in Section 81-12-205.

(2) Any removal pursuant to subsection (1) of this section shall be effective in all respects as if such removal had been made by the board of directors or the shareholders of the association in question.

(3) Without the prior written approval of the commissioner, no director or officer removed pursuant to this section shall be eligible to be elected or reelected to any position as an officer or director of that association nor shall such an officer or director be eligible to be elected to or retain a position as an officer or director of any other association or financial institution.

(4) The commissioner may appoint a director or officer to fill any vacancy caused by a removal pursuant to this section, but such appointed director or officer, should such removal be permanent, shall be appointed only to serve the balance of the term of the vacant position. The commissioner may waive the requirements of Section 81-12-83(3) of a director appointed under the provisions of this section. Such director shall be eligible to be elected by the shareholders thereafter. Such officer shall be eligible to be elected by the board of directors of an association.

SOURCES: Laws, 1983, ch. 455; reenacted, Laws, 1990 Ex Sess, ch. 52, § 13; Laws, 1993, ch. 441, § 13; reenacted and amended, 1994, ch. 622, § 45; reenacted without change, Laws, 1997, ch. 496, § 10; reenacted without change, Laws, 2001, ch. 488, § 11, eff from and after July 1, 2001.

RESEARCH REFERENCES

ALR. Bank officer's or employee's misapplication of funds as state criminal offense. 34 A.L.R.4th 547.

§ 81-12-25. Incorporation; petition; fee; articles; bylaws; exhibits.

Any five (5) or more individuals (hereinafter referred to as the "incorporators"), citizens of this state, may form a mutual association or capital stock association to promote thrift and home financing, subject to approval as hereinafter provided in this chapter, by filing with the commissioner, two (2) sworn duplicate originals of a petition for a certificate of incorporation in the form to be prescribed by the commissioner, accompanied by the proposed articles of incorporation and proposed bylaws, each in a form approved by the commissioner and accompanied by the incorporation fee. The proposed bylaws shall make provisions for (a) annual meeting of members or stockholders, (b) special meeting of members or stockholders, (c) notice of meeting of members or stockholders, (d) procedure for nomination of directors, (e) meetings of board of directors, (f) resignation and removal of directors, (g) officers, (h) execution of instruments, (i) evidence of savings accounts, (j) corporate seal, (k) fiscal year, (*l*) amendments and (m) such other matters as may be prescribed by the commissioner by rule or regulation. The petitioners shall submit with their petition statements, exhibits, maps and other data which the commissioner may require, which data shall be sufficiently detailed and comprehensive to enable the commissioner to pass upon the petition as to the criteria set out in Section 81-12-27.

SOURCES: Laws, 1977, ch. 445, § 6 (1); reenacted, 1982, ch. 301, § 13; Laws, 1990 Ex Sess, ch. 52, § 14; Laws, 1993, ch. 441, § 14; reenacted and amended, 1994, ch. 622, § 46; reenacted without change, Laws, 1997, ch. 496, § 11; reenacted without change, Laws, 2001, ch. 488, § 12, eff from and after July 1, 2001.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision, and Publication corrected a typographical error in Section 11 of ch. 496, Laws, 1997. In item (b) of this section, the words "or members" were deleted. The Joint Committee ratified the correction at the May 8, 1997 meeting of the Committee, and the section has been reprinted in the supplement to reflect the corrected language.

Cross References — Articles of incorporation of banking corporations, see § 81-3-7.

Filing of articles of incorporation of an association converting into a capital stock association, see § 81-12-57.

RESEARCH REFERENCES

Am Jur. 13 Am. Jur. 2d, Building and Loan Associations §§ 186-191.

5 Am. Jur. Pl & Pr Forms (Rev), Building and Loan Associations, Forms 1 et seq. (formation and organization).

4 Am. Jur. Legal Forms 2d, Building and Savings and Loan Associations §§ 48:21-48:24, 48:31-48:34.

CJS. 12 C.J.S., Building and Loan Associations, Savings and Loan Associations, and Credit Unions §§ 9 et seq.

§ 81-12-27. Incorporation; examination and investigation of petition.

Upon receipt of a petition for a certificate of incorporation, including supporting data, the commissioner shall promptly give consideration to the petition and make an examination of the proposed articles of incorporation to determine if they meet all requirements of law. The commissioner shall then make an investigation to determine that the prerequisites of this chapter have been complied with and that:

(a) The character, responsibility and general fitness of the persons named in the petition are such as to command confidence and warrant belief that the business of the proposed association will be honestly and efficiently conducted in accordance with the intent and purpose of this chapter, and that the proposed association will have qualified full-time management;

(b) There is public need for the proposed association and the interest of the public will be best served by granting the petition;

(c) The anticipated volume and type of business of the proposed association is such as to indicate profitable operation within a reasonable time; and

(d) The operation of the proposed association will not unduly harm any properly conducted financial institution serving the needs and existing in the community in which the principal office or any branch of the proposed association is to be located.

SOURCES: Laws, 1977, ch. 445, § 6(2); reenacted, 1982, ch. 301, § 14; Laws, 1990 Ex Sess, ch. 52, § 15; Laws, 1993, ch. 441, § 15; Laws, 1994, ch. 622, § 47; reenacted without change, Laws, 1997, ch. 496, § 12; reenacted without change, Laws, 2001, ch. 488, § 13, eff from and after July 1, 2001.

Cross References — Certificate to incorporate and organize bank, see § 81-3-13.

Data required to be submitted with petition for incorporation, see § 81-12-25.

Hearing on petition for certificate of incorporation, see § 81-12-29.

Application of criteria of this section to change of location of home office, see § 81-12-43.

Examination and investigation of a petition to establish a branch office, see § 81-12-175.

JUDICIAL DECISIONS

1.-10. [Reserved for future use.]
11. Under former § 81-11-11.

1.-10. [Reserved for future use.]

11. Under former § 81-11-11.

Where substantial evidence supported the findings of board of savings and loan associations granting an association authority to open a branch office in another city, the court will uphold the findings of the board. Colonial Sav. & Loan v. Security Sav. & Loan Ass'n, 288 So. 2d 857 (Miss. 1974).

A savings and loan association which seeks to establish a branch office must show a substantial or obvious need justifying the location of a branch savings and loan association; mere convenience is not sufficient to satisfy the statutory requirement. Bankers Trust Sav. & Loan Ass'n v. Bank of Winona, 243 So. 2d 415 (Miss. 1971).

§ 81-12-29. Incorporation; notice of petition; filing notice of opposition; hearing.

(1) Upon receipt of a petition for a certificate of incorporation to form an association, the complete filing and filing date to be determined by the commissioner, the commissioner shall, within fifteen (15) days of the determined filing date, give written notice to all financial institutions in the county in which the proposed association is to be located and to all financial institutions in the counties bordering the county in which the proposed association is to be located. Notice shall also be sent to all interested persons and shall be published one (1) time in a newspaper of general circulation in the county in which the proposed association is to be located. Such notice shall include the subject matter of the petition and shall invite persons to be heard by the board by sworn written statement or in person. Any financial institution opposing approval of the petition of incorporation shall file a sworn written statement of such opposition with the commission er not later than the date fixed therefor by the commissioner in his notice. The statement of opposition shall set forth in summary form specific objections to the incorporation of the proposed association. The protestant shall, at the same time its statement of opposition is filed with the commissioner, furnish the petitioner a copy of such statement by first class United States mail. The protestant shall certify to the commissioner that he has furnished such statement to the petitioner.

(2) Within forty-five (45) days of the determined filing date of a petition for a certificate of incorporation to form an association, the commissioner, in writing, shall set a date for the hearing of such petition by the board to consider the petition and his findings, such date to be not earlier than sixty (60) days and not more than ninety (90) days from the determined filing date of the petition. Written notice of such hearing date shall be furnished by first class

United States mail to the board members, the petitioner, the petitioner's attorney, and any protestants of record and their attorneys.

(3) When the commissioner has completed the examination and made his investigation, he shall record his findings and recommendations in writing and present them to the board at least fifteen (15) days prior to the hearing date set pursuant to subsection (2) of this section.

(4) Times established pursuant to this section may be extended by the commissioner upon good cause shown.

SOURCES: Laws, 1977, ch. 445, § 6(3); Laws, 1982, chs. 301, § 15; 331, § 3; reenacted, 1990 Ex Sess, ch. 52, § 16; Laws, 1993, ch. 441, § 16; reenacted and amended, 1994, ch. 622, § 48; reenacted without change, Laws, 1997, ch. 496, § 13; reenacted without change, Laws, 2001, ch. 488, § 14, eff from and after July 1, 2001.

Cross References — Requirement of a hearing for change of name or location of home office, see § 81-12-43.

Application and notice of hearing to change name or location of branch bank, see § 81-12-175.

Establishment of a savings branch office, loan branch office or a loan processing office by an association, see § 81-12-176.

JUDICIAL DECISIONS

1.-10. [Reserved for future use.]
11. Under former § 81-11-9.

1.-10. [Reserved for future use.]

11. Under former § 81-11-9.

A state-chartered savings and loan association, by substantial compliance with the provisions of former Code 1942, § 5310, obtained a charter amendment, which became effective prior to the effective date of Code 1942, §§ 5288-01 et seq., authorizing it to move its principal office or place of business from Columbus to Oxford. North Miss. Sav. & Loan Ass'n v. Confederate States Sav. & Loan Ass'n, 250 Miss. 463, 166 So. 2d 119 (1964).

§ 81-12-31. Incorporation; meeting of board to consider petition; cross-examination of and compelling attendance of witnesses; disposition of petition.

The board, at its meeting, shall consider the findings and recommendation of the commissioner and shall hear such oral testimony as he may wish to give or be called upon to give, and shall also receive information and hear testimony from the prospective incorporators of the proposed association and from any and all other interested persons bearing upon the approval of the petition and the operation of the new association. All witnesses shall be subject to cross-examination by any of the parties who are incorporators or objectors or by the board. After considering the findings, and recommendation submitted to it by the commissioner and his oral testimony, if any, and considering such other information and evidence, either written or oral, which has come before it, the board shall decide if it has before it sufficient information and evidence upon which it can dispose of the petition for a certificate of incorporation to form an association. If it is determined that evidence and information is not sufficient, then the board shall order the commissioner to secure such additional information and evidence as it may prescribe or shall request such from the prospective incorporators and from other interested persons. The board shall thereupon set a date for a future meeting to be held in not less than forty-five (45) nor more than sixty (60) days and shall give to the prospective incorporators, financial institutions and other interested persons the same notice of such meeting prescribed above and shall recess the meeting then being held until such future date. The board shall have and is hereby vested with the power to compel attendance of witnesses, just as is the commissioner, and all testimony given before said board shall be taken down and may be transcribed by a reporter at the request of any interested party. If the board, or a majority thereof, shall determine that it has before it sufficient evidence and information upon which to base a decision, then it shall render a written opinion and decision in the matter within sixty (60) days of the last meeting. If its decision is favorable, then the board shall issue a certificate of approval of incorporation of the association.

SOURCES: Laws, 1977, ch. 445, § 6(4); reenacted, 1982, ch. 301, § 16; Laws, 1990 Ex Sess, ch. 52, § 17; Laws, 1993, ch. 441, § 17; Laws, 1994, ch. 622, § 49; reenacted without change, Laws, 1997, ch. 496, § 14; reenacted without change, Laws, 2001, ch. 488, § 15, eff from and after July 1, 2001.

Cross References — Hearing on petition for certificate of incorporation, see § 81-12-29.

§ 81-12-33. Incorporation; proceedings upon approval of incorporation; commencement of corporate existence.

(1) The commissioner shall file one (1) signed copy of such certificate of approval and of the certificate of incorporation with the Secretary of State. The commissioner shall endorse upon the two (2) copies of the petition for certificate of incorporation filed with him such certificate of approval and return the duplicate original and a copy of the certificate of incorporation to the association, addressed to the chairman of the incorporators, and shall retain the original petition for certificate of incorporation and a copy of the certificate of incorporation in the permanent files of his office. He shall return one (1) copy of the approved bylaws to the association, addressed to the chairman of the incorporators, and retain in the permanent files of his office the original signed copy of the approved bylaws. The petition for certificate of incorporation, the certificate of approval of incorporation, the certificate of incorporation, and the bylaws shall not be filed or recorded in any other state or county office. The failure of the commissioner to file, return or retain any such document as above provided shall not affect the validity of the incorporation of any association.

(2) The corporate existence of an association shall begin on the date the commissioner issues the certificate of incorporation of the association.

SOURCES: Laws, 1977, ch. 445, § 6(5, 6); reenacted, 1982, ch. 301, § 17; Laws, 1990 Ex Sess, ch. 52, § 18; Laws, 1993, ch. 441, § 18; Laws, 1994, ch. 622, § 50;

reenacted without change, Laws, 1997, ch. 496, § 15; reenacted without change, Laws, 2001, ch. 488, § 16, eff from and after July 1, 2001.

JUDICIAL DECISIONS

1.-10. [Reserved for future use.]
11. Under former § 81-11-13.

1.-10. [Reserved for future use.]

11. Under former § 81-11-13.

Where two petitioners have applied for authority to locate or establish a savings and loan business in a particular area, the two applications may be simultaneously considered by the board, but the first application must be either granted or dismissed before the board can finally adjudicate or act upon the subsequent application. However, consideration should be given by the board to the merits of each application before making a decision on the first application so as to insure that the public will be protected. North Miss. Sav. & Loan Ass'n v. Collins, 317 So. 2d 913 (Miss. 1975).

RESEARCH REFERENCES

Am Jur. 13 Am. Jur. 2d, Building and Loan Associations § 102.

5 Am. Jur. Pl & Pr Forms (Rev), Building and Loan Associations, Forms 1, 3, 4.

CJS. 12 C.J.S., Building and Loan Associations, Savings and Loan Associations, and Credit Unions § 20.

§ 81-12-35. Organization of mutual association; subscription by incorporators; bond; expense fund; organization meeting.

(1) A mutual association shall be organized in accordance with this section. The incorporators shall appoint one (1) of their number as chairman of the incorporators. The incorporators, before a certificate of incorporation is issued, shall pay in cash to such chairman, as subscription to the savings accounts of any proposed association, including that part of the original subscription paid by such chairman, an aggregate amount, fixed as follows in relation to the population of the municipality in which the home office of the association is to be located: (a) in municipalities having not more than twenty-five thousand (25,000) inhabitants, the minimum sum of Five Hundred Thousand Dollars ($500,000.00); (b) in municipalities having more than twenty-five thousand (25,000), but not more than one hundred thousand (100,000) inhabitants, the minimum sum of One Million Dollars ($1,000,000.00); (c) in municipalities having one hundred thousand (100,000) or more inhabitant s, the minimum sum of One Million Five Hundred Thousand Dollars ($1,500,000.00). The population of the municipality shall be determined by the commissioner based upon the latest federal decennial census.

(2) The incorporators shall procure from a surety company or other surety acceptable to the commissioner, a surety bond in form approved by the commissioner in an amount equal to seventy-five percent (75%) of the minimum original subscription required by paragraph (1). Such bond shall name the commissioner as obligee and shall be delivered to him. It shall assure the safekeeping of the funds subscribed and their delivery to the association after

the issuance of the certificate of incorporation and after the bonding of the officers. In the event of the failure to complete organization, such bond shall assure the return of the amounts collected to the respective subscribers or their assigns, less reasonable expense which shall be deducted from the expense fund.

(3) The incorporators, in addition to their subscriptions to savings accounts, shall create an expense fund in an amount not less than twenty-five percent (25%) of the minimum amount of savings account subscriptions required to be paid in under this chapter, from which expense fund the expense of organizing the association and its operating expenses may be paid until such time as its net income is sufficient to pay such earnings as may be declared and paid or credited to its savings account holders from sources available for payment of earnings. The incorporators and others, before a certificate of incorporation is issued, shall deposit to the credit of the chairman of the incorporators in cash the amount of the expense fund. The amounts contributed to the expense fund by the incorporators and others shall not constitute a liability of the association except as hereinafter provided.

(4) Contributions made by the incorporators and others to the expense fund may be repaid pro rata to the contributors from the net income of the association after provision for statutory reserves and declaration of earnings of not less than the contract or prevailing rate whichever may be applicable. In case of the liquidation of an association before contributions to the expense fund have been repaid, any contributions to the expense fund remaining unexpended, after the payment of expenses of liquidation, all creditors, and the withdrawal value of all savings accounts, shall be repaid to the contributors pro rata. The books of the association shall reflect the expense fund. Contributors to the expense fund shall, at the times earnings regularly are distributed to savings account holders, be paid earnings on the amounts paid in by them and remaining unreimbursed, and for such purpose such contributions shall be considered as savings accounts of the association.

(5) Within thirty (30) days after the corporate existence of an association begins, the directors of the association shall hold an organization meeting and shall elect officers pursuant to the provisions of this chapter and the bylaws. At the organization meeting the directors shall take such other action as is appropriate in connection with beginning the transaction of business by the association. The commissioner may extend by order the time within which the organization meeting shall be held for a period not to exceed thirty (30) days.

SOURCES: Laws, 1977, ch. 445, § 7; reenacted, 1982, ch. 301, § 18; Laws, 1990 Ex Sess, ch. 52, § 19; Laws, 1993, ch. 441, § 19; Laws, 1994, ch. 622, § 51; reenacted without change, Laws, 1997, ch. 496, § 16; reenacted without change, Laws, 2001, ch. 488, § 17, eff from and after July 1, 2001.

Cross References — Requirement of an organizational meeting for formation of a capital stock association, see § 81-12-39.

§ 81-12-37. Capital stock association; minimum required capital; paid-in surplus; determining and maintaining adequate net worth.

A capital stock association shall be organized in accordance with this section. The incorporators shall appoint one (1) of their number as chairman of the incorporators. The capital of a capital stock association shall be the sum of the par value of all shares of voting capital stock. The minimum required capital shall be: (a) in municipalities having not more than twenty-five thousand (25,000) inhabitants, the minimum sum of Five Hundred Thousand Dollars ($500,000.00); (b) in municipalities having more than twenty-five thousand (25,000), but not more than one hundred thousand (100,000) inhabitants, the minimum sum of One Million Dollars ($1,000,000.00); (c) in municipalities having more than one hundred thousand (100,000) inhabitants, the minimum sum of One Million Five Hundred Thousand Dollars ($1,500,000.00). The population of the municipality shall be determined by the commissioner based upon the latest federal census. No commissions, fees or other remuneration shall be paid for the sale of shares of capital stock necessary to meet the minimum capital and paid-in surplus requirements of this section. No incentive stock shall be issued. All stock shall be sold at not less than par value.

In addition to the minimum capital required above, the subscribers shall pay an additional amount equal to not less than twenty-five percent (25%) of the par value of the stock subscribed, which shall be credited to paid-in surplus and may be used to offset losses from operations. Such minimum capital and surplus may be used for the reserves required by law as may be permitted by the board.

After organization or conversion, each capital stock association shall maintain an adequate net worth appropriate for the conduct of its business and the protection of its savings account holders. The net worth adequacy of a capital stock association shall be determined by the commissioner on a regular basis but not less than one (1) time per year after evaluating the character of management, the liquidity or quality of assets, history of earnings and the retention thereof, the potential volatility of the deposit structure, and the association's capacity to furnish the broadest service to the public. A written report of such finding and determination shall be made and filed. Such report shall include actions recommended to be taken. A copy of such report shall be sent to each member of the board and considered by the board at its next meeting.

SOURCES: Laws, 1977, ch. 45, § 8(1); Laws, 1982, chs. 301, § 19; 426, § 1; reenacted, 1990 Ex Sess, ch. 52, § 20; Laws, 1993, ch. 441, § 20; Laws, 1994, ch. 622, § 52; reenacted without change, Laws, 1997, ch. 496, § 17; reenacted without change, Laws, 2001, ch. 488, § 18, eff from and after July 1, 2001.

Cross References — Exclusion of capital stock associations organized under this section from definition of "member," see § 81-12-3.

Reduction of permanent capital through reduction of outstanding voting capital stock, see § 81-12-51.

§ 81-12-39. Capital stock association; statement of compliance; issuance of certificate of authorization; organization meeting.

(1) After approval by the board of the petition for a certificate of incorporation, the proposed capital stock association shall file with the commissioner a statement in such form and with such supporting data and proof as it may require, showing that the entire capital including paid-in surplus has been fully and unconditionally paid in lawful cash money and that the funds representing such capital and paid-in surplus, less sums of the paid-in surplus spent with the approval of the commissioner for land, building, supplies, fixtures, equipment and organization, are on hand and that it has acquired insurance of accounts as provided in this chapter. If the board finds that the capital stock association has in good faith complied with all the requirements of law, it shall, within thirty (30) days after the filing of the said statement issue, in duplicate, under its official seal, a certificate of authorization to transact a general savings and loan business, transmitting one (1) copy to the association and placing one (1) copy in the department file. Said certificate shall state that the association named therein is authorized to transact a general savings and loan business. Should the board find that said statement does not comply with the law, it shall so notify the association and require such compliance as it finds necessary.

(2) Within forty-five (45) days after the corporate existence of an association begins, the directors of the association shall hold an organization meeting for the purpose set forth in Section 81-12-35(5) above, provided the time of such meeting may be similarly extended.

SOURCES: Laws, 1977, ch. 445, § 8(2, 3); reenacted, 1982, ch. 301, § 20; Laws, 1990 Ex Sess, ch. 52, § 21; Laws, 1993, ch. 441, § 21; Laws, 1994, ch. 622, § 53; reenacted without change, Laws, 1997, ch. 496, § 18; reenacted without change, Laws, 2001, ch. 488, § 19, eff from and after July 1, 2001.

Cross References — Exclusion of capital stock associations organized under this section from definition of "member," see § 81-12-3.

§ 81-12-41. Name of association; enjoining violations; penalty.

(1) The name of every association may include either the words "savings association," or "savings and loan association." If used, these words shall be preceded by an appropriate descriptive word or words approved by the commissioner. An ordinal number may not be used as a single descriptive word preceding the words "savings association," or "savings and loan association," unless such words are followed by the words "of ________," the blank being filled by the name of the community, town, city or county in which the association has its home office. An ordinal number may be used, together with

another descriptive word, preceding the words "savings association" or "savings and loan association," provided the other descriptive word has not been used in the corporate name of any other association in the state, in which case the suffix mentioned above is not required to be used. An ordinal number may be used, together with another descriptive word, preceding the words "savings association" or "savings and loan association," even when such other descriptive word has been used in the corporate name of an association in the state, provided the suffix "of ________," as provided above, is also used. The suffix provided above may be used in any corporate name. The use of the words, "National," "Federal," "United States," "Insured," "Guaranteed," or any form thereof, separately or in any combination thereof with other words or syllables, is prohibited as part of the corporate name of an association organized under this chapter. No certificate of incorporation of a proposed association having the same name as a corporation authorized to do business under the laws of this state or a name so nearly resembling it as to be likely to deceive shall be issued by the commissioner, except to an association formed by the reincorporation, reorganization, or consolidation of the association with other associations, or upon the sale of the property or franchise of an association.

(2) No person, firm, company, association, fiduciary, partnership or corporation, either domestic or foreign, unless he or it is lawfully authorized to do business in this state under the provisions of this chapter and actually is engaged in carrying on an association business shall do business under any name or title which contains the terms "savings association," "savings and loan association," "building and loan association," "building association," or any combination employing either or both of the words "building" or "loan" with one or more of the words "saving," "savings," "thrift," or words of similar import, or any combination employing one or more of the words "saving," "savings," "thrift," or words of similar import with one or more of the words "association," "institution," "society," "company," "fund," "corporation," or words of similar import, or use any name or sign or circulate or use any letterhead, billhead, circular or paper whatever, or advertise or represent in any manner which indicates or reasonably implies that his or its business is the character or kind of business carried on or transacted by an association or which is likely to lead any person to believe that his or its business is that of an association. Upon application by the commissioner or any association, an injunction may issue to restrain any such entity from violating or continuing to violate any of the foregoing provisions of this subsection. Any person who violates any provision of this subsection shall be punished by a fine of not more than Five Thousand Dollars ($5,000.00), and each day of violation shall constitute a separate offense. The prohibitions of this subsection shall not apply to any corporation or association formed solely for the purpose of promoting the interests of thrift institutions, the membership of which is comprised of thrift institutions, their officers or other representatives.

SOURCES: Laws, 1977, ch. 445, § 9(1, 2); reenacted, 1982, ch. 301, § 21; Laws, 1990 Ex Sess, ch. 52, § 22; Laws, 1993, ch. 441, § 22; Laws, 1994, ch. 622, § 54; Laws, 1996, ch. 400, § 17; reenacted without change, Laws, 1997, ch. 496,

§ 19; reenacted without change, Laws, 2001, ch. 488, § 20, eff from and after July 1, 2001.

Cross References — Inclusion of words "bank" or "banking," in name of bank, see § 81-3-3.

Power of the commissioner to require associations and corporations to correct violations, see § 81-12-23.

JUDICIAL DECISIONS

1. In general.

Statute prohibiting state incorporation of a savings association under a name deceitfully similar to an existing association doing business within the state does not appear to provide a right of action and sanctions against a savings association once it has been incorporated under such a name. First S. Fed. Sav. & Loan Ass'n v. First S. Sav. & Loan Ass'n, 614 F.2d 71, 207 U.S.P.Q. 295 (5th Cir. 1980).

RESEARCH REFERENCES

Am Jur. 13 Am. Jur. 2d, Building and Loan Associations § 188.

§ 81-12-43. Change of name or location of home office; hearing.

(1) Without the prior approval of the commissioner or the board, as provided in this chapter, no association shall change its name or establish any office other than its home office, which shall be in the location named in the certificate of incorporation. No office of an association shall be moved unless approved as provided in this chapter.

(2) The name or the location of the home office of any association fixed in the certificate of incorporation may be changed in the following manner:

(a) The proposed new name of the association shall be approved by a resolution adopted by the board of directors. Immediately preceding application to the commissioner for approval, notice of intention to change the name, signed by two (2) officers, shall be published once a week for two (2) successive weeks in a newspaper of general circulation in the county in which the home office is located, and a copy of such notice shall be displayed during such consecutive period of two (2) weeks in a conspicuous public place in the home office of the association. Five (5) copies of an application to the commissioner for approval shall be signed by two (2) officers of the association, acknowledged before an officer competent to take acknowledgments of deeds, and filed with the commissioner. If the application for change of name is approved, the commissioner shall endorse on each copy of the application therefor a certificate of approval thereof, and the change of name of such association shall be effective immediately.

(b)(i) The proposed new location of the association shall be approved by a resolution adopted by the board of directors. Immediately preceding application to the commissioner for approval, notice of intention to change the location of the home office, signed by two (2) officers, shall be published once a week for two (2) successive weeks in a newspaper of general circulation in the county in which the home office is located, and a copy of such notice shall be displayed during such consecutive period of two (2) weeks in a conspicuous public place in the home office of the association. Five (5) copies of an application to the commissioner for approval shall be signed by two (2) officers of the association and acknowledged before an officer competent to take acknowledgments of deeds, and filed with the commissioner.

(ii) Whenever the commissioner shall receive from any association pursuant to item (i) of this paragraph (b) an application for change of location of its home office to a municipality other than that in which it is located, he shall make a determination based upon the criteria set out in Section 81-12-27 in the case of establishment of a newly chartered association, and thereafter a hearing shall be held in the manner, within the time and on the notice provided for in Section 81-12-29 and no change of location shall be made without approval of the board.

(iii) Whenever the commissioner shall receive from any association pursuant to item (i) of this paragraph (b) an application for change of location of its home office to another location within the same municipality, the commissioner shall prescribe the form of the petition, prerequisites and requirements. If no protests are filed after notice is given as provided in Section 81-12-29(1), the commissioner may approve such application if it meets the established prerequisites and requirements. If protests are filed, the commissioner, upon reasonable notice to the applying association and its attorney and to the protestants and their attorneys, shall hold a hearing and, based upon his written findings at such hearing, issue a certificate of approval or disapproval.

(3) Upon approval of an application for a change of name or home office location, the commissioner shall endorse on each copy of such application a certificate of approval, as provided in this chapter. When the commissioner shall have endorsed such approval upon the copies of an application for approval of change of name or change of location of home office, he shall file one (1) copy thereof with the Secretary of State, two (2) copies with the federal home loan bank of which the association is a member, return one (1) copy to the applicant association and retain the original copy in the permanent files of his office.

SOURCES: Laws, 1977, ch. 445, § 9(3, 4); Laws, 1982, chs. 301, § 22; 331, § 4; reenacted, 1990 Ex Sess, ch. 52, § 23; Laws, 1993, ch. 441, § 23; Laws, 1994, ch. 622, § 55; reenacted without change, Laws, 1997, ch. 496, § 20; reenacted without change, Laws, 2001, ch. 488, § 21, eff from and after July 1, 2001.

Cross References — Change of name or location of a branch office, see § 81-12-175.

§ 81-12-45. Forfeiture of corporate existence; new corporations; extension of time within which to commence business.

Any association which obtains its charter of incorporation subsequent to July 1, 1977, and which shall not commence business within six (6) months after the date upon which its corporate existence shall have begun, shall forfeit its corporate existence, unless the commissioner, before the expiration of such period of six (6) months shall have approved the extension of time within which it may commence business not to exceed ninety (90) days, upon a written application stating the reasons for such delay. Upon such forfeiture the certificate of incorporation shall expire, and all action taken in connection with the incorporation thereof, except the payment of the incorporation fee, shall become void. Amounts credited on savings accounts, less expenditures authorized by law, shall be returned pro rata to the respective holders thereof.

SOURCES: Laws, 1977, ch. 445, § 9(5); reenacted, 1982, ch. 301, § 23; Laws, 1990 Ex Sess, ch. 52, § 24; Laws, 1993, ch. 441, § 24; Laws, 1994, ch. 622, § 56; reenacted without change, Laws, 1997, ch. 496, § 21; reenacted without change, Laws, 2001, ch. 488, § 22, eff from and after July 1, 2001.

§ 81-12-47. Insurance accounts; liquidation of noncomplying existing associations; false representation as to insurance; penalty; injunction.

(1) Each association which obtained its charter of incorporation prior to July 1, 1977, and was organized and engaged in business on July 1, 1977, must submit evidence satisfactory to the commissioner that it has:

(a) Obtained insurance of its savings accounts and share accounts by the Federal Deposit Insurance Corporation or an agency of this state established for the purpose of insuring savings accounts of associations organized under this chapter; or

(b) Become a federal savings and loan association and a member of the federal home loan bank system; or

(c) Merged into, been acquired by, or otherwise consolidated with an existing association whose savings accounts and share accounts are insured by the Federal Savings and Loan Insurance Corporation or by some other federal agency or an agency of this state established for the purpose of insuring savings accounts of associations organized under this chapter; provided any merger into, acquisition by or consolidation with an insured association must have prior approval of the board; or

(d) Entered into voluntary or involuntary liquidation.

(2) No charter of incorporation shall be granted or approved by the board after July 1, 1977, unless the applicant for such charter submits sufficient evidence satisfactory to the board that its savings accounts and share accounts are insured by the Federal Deposit Insurance Corporation or an agency of this state established for the purpose of insuring savings accounts of associations organized under this chapter, or will be so insured immediately subsequent to the approval of the charter of incorporation by the board.

(3) No association that obtained its charter prior to July 1, 1977, but which was not organized and engaged in business on July 1, 1977, shall accept deposits unless and until it first complies with subsection (2) of this section, and any additional requirements imposed as to charters granted after July 1, 1977.

(4) Notwithstanding any other provision of state law to the contrary, if any association which obtained its charter of incorporation prior to July 1, 1977, and was organized and engaged in business on July 1, 1977, has not accomplished one (1) of the four (4) conditions prescribed in subparagraphs (a), (b), (c) and (d) of subsection (1) on July 1, 1977, the conservator appointed pursuant to Section 81-11-91 shall apply to the chancery court judge designated by the Supreme Court as hereinafter provided for appointment of a liquidating receiver for purposes of liquidating the assets of the association; however, if any such association shall furnish sufficient evidence satisfactory to the conservator appointed pursuant to Section 81-11-91 that a definite plan of accomplishment of one (1) of the four (4) conditions prescribed in subsection (1) has been substantially completed, the conservator appointed pursuant to Section 81-11-91 may extend the time for taking action for the appointment of such receiver, but not beyond March 31, 1978, upon such terms and conditions as the conservator may prescribe. In the absence of a compelling reason to do otherwise, the chancery court judge shall appoint the conservator appointed pursuant to Section 81-11-91 as the liquidating receiver. For the purposes of this subsection, the Supreme Court, upon application of the conservator appointed pursuant to Section 81-11-91, shall designate a chancery court judge who shall, after such designation, have exclusive jurisdiction of all proceedings initiated under this subsection.

(5) No association or officer or employee thereof shall represent in any way that its accounts are insured, unless such accounts are in fact insured by the Federal Deposit Insurance Corporation or an agency of this state established for the purpose of insuring savings accounts in associations. Any person who shall violate this provision shall be guilty of a misdemeanor and, upon conviction, shall be punished as such. Upon application of the Attorney General to the chancery court of the county in which the association is domiciled, violations of this provision shall be enjoined.

SOURCES: Laws, 1977, ch. 445, § 10; reenacted, 1982, ch. 301, § 24; Laws, 1990 Ex Sess, ch. 52, § 25; Laws, 1993, ch. 441, § 25; reenacted and amended, 1994, ch. 622, § 57; reenacted without change, Laws, 1997, ch. 496, § 22; reenacted without change, Laws, 2001, ch. 488, § 23, eff from and after July 1, 2001.

Editor's Note — Section 81-11-91 referred to in (4) was repealed by Laws, 1997, ch. 542, § 12, eff from and after passage (approved April 10, 1997).

RESEARCH REFERENCES

Am Jur. 13 Am. Jur. 2d, Building and Loan Associations § 11.

§ 81-12-49. Powers of associations.

Every association incorporated pursuant to or operating under the provisions of this chapter shall have all the powers enumerated, authorized and permitted by this chapter and such other rights, privileges and powers as may be incidental to or reasonably necessary for the accomplishment of the objects and purposes of this chapter. Every association shall have the following powers:

(a) To be organized for a period not to exceed ninety-nine (99) years, but renewable for additional periods of ninety-nine (99) years in the same manner as the original charter was secured; to adopt and use a corporate seal, which may be affixed by imprint, facsimile or otherwise; and to adopt and amend bylaws as provided in this chapter;

(b) To sue and be sued, complain and defend in any court of law or equity;

(c) To acquire, hold, sell, dispose of and convey real and personal estate incidental to its business as a thrift institution, to mortgage, pledge or lease real or personal estate, and to take property by gifts, devise or bequest, provided that such powers are consistent with the objects and powers granted by this chapter;

(d) An association may accept such savings accounts or other accounts as are authorized by its board of directors and approved by the general regulation of the commissioner not inconsistent with this chapter. The savings deposits may be evidenced by certificates of deposit, passbooks or such other evidence of deposit or account as the board of directors may prescribe. An association may pay interest on its deposits or other accounts from any sources available for such payment at such rate and at such times and for such time or notice periods as are determined by resolution of its board of directors within the limitation set by the commissioner. The board of directors shall determine by resolution the method of calculating the interest on deposits or other accounts and the time when and manner in which interest is to be paid or credited. Such methods shall comply with the regulations issued by the commissioner as to calculation and payment of interest;

(e) An association may borrow up to twenty-five percent (25%) of its savings liability and net worth for lending purposes; an association may borrow an additional twenty-five percent (25%) of its savings liability and net worth for the purpose of making loans guaranteed by the Federal Housing Administration, a private mortgage guaranty insurance company licensed to do business in this state, or by the Veterans Administration; an association may borrow up to fifty percent (50%) of its savings liability and net worth to pay withdrawals. Borrowing of additional amounts for purchase or construction of a home office or branch office is authorized, but only with approval of the commissioner. Subsequent reduction of savings liability and net worth shall not in any way affect outstanding obligations, but shall be reported to the commissioner and steps taken to comply within a reasonable time. The directors may pledge or authorize the officers to pledge any assets of the association to secure any loans herein permitted. For the purpose of this paragraph, use of savings accounts in the association shall not be considered borrowing;

(f) To sell without recourse any loan, including any participating interests therein, at any time; notwithstanding the limitations of this subsection, loans may be assigned for collateral purposes with recourse to any federal home loan bank of which the association is a member;

(g) To obtain and maintain insurance of its savings accounts with the Federal Deposit Insurance Corporation or an agency of this state established for the purpose of insuring savings accounts of associations organized under this chapter;

(h) To qualify as and become a member of a federal home loan bank;

(i) To appoint officers, agents and employees as its business shall require and to provide them suitable compensation; to provide for life, health and casualty insurance for officers and employees, and to adopt and operate reasonable bonus plans and retirement benefits for such officers and employees; and to provide for reimbursement and indemnification of its officers, employees and directors as prescribed or permitted in this chapter, whether by insurance or otherwise;

(j) To become a member of, deal with or make reasonable payments or contributions to any organization to the extent that such organization assists in furthering or facilitating the association's purposes, powers or community responsibilities, and to comply with any reasonable conditions of eligibility;

(k) To maintain and let safes, boxes or other receptacles for the safekeeping of personal property upon such terms and conditions as may be agreed upon;

(*l*) To sell money orders, travel checks and similar instruments drawn by it on its bank accounts or as agent for any organization empowered to sell such instruments through agents within this state;

(m) If and when an association is a member of a federal home loan bank, to act as fiscal agent of the United States, and, when so designated by the Secretary of the Treasury, to perform, under such regulations as he may prescribe, all such reasonable duties as fiscal agent of the United States as he may require;

(n) To service loans and investments for others;

(o) Upon application to and approval by the commissioner, to act as trustee, and to receive reasonable compensation for so acting, of any trust created or organized in the United States and forming part of a plan which qualifies for specific tax treatment under Section 401(d) of the Internal Revenue Code of 1954, including any Keogh or IRA plan, or any trust created or organized in the United States for the purpose of paying burial or cemetery expenses, if the funds of such trust are invested only in savings accounts or deposits in such association or in obligations or securities issued by such association. All funds held in such fiduciary capacity by any such association may be commingled for appropriate purposes of investment, but individual records shall be kept by the fiduciary for each participant and shall show in proper detail all transactions engaged in under the authority of this subsection;

(p) To acquire savings and pay earnings thereon, and to lend and invest its funds as provided in this chapter;

(q) To appoint a registered agent of the association upon whom any process, notice or demand required or permitted by law to be served on the association shall, if such agent is appointed, be served;

(r) To have and possess such of the rights, powers, privileges, immunities, duties and obligations of a federal savings and loan association located in this state as may be prescribed by the board by general regulation under the circumstances and conditions set out therein. In the event of a conflict between the provisions of this paragraph (r) and any other provision of this chapter, the provisions of this paragraph shall control;

(s) To act as agent for others in any transaction incidental to the operation of the association's business;

(t) To issue, sell or negotiate or advertise for the issuance and sale of debt securities to the extent authorized by the commissioner.

SOURCES: Laws, 1977, ch. 445, § 11; Laws, 1980, ch. 449, § 2; Laws, 1982, chs. 301, § 25; 467, § 1; reenacted, Laws, 1990 Ex Sess, ch. 52, § 26; Laws, 1993, ch. 441, § 26; reenacted and amended, Laws, 1994, ch. 622, § 58; reenacted without change, Laws, 1997, ch. 496, § 23; reenacted without change, Laws, 2001, ch. 488, § 24, eff from and after July 1, 2001.

Cross References — Additional powers of capital stock associations, see § 81-12-51.

Power to pay withdrawals to parties other than account holders if federal associations in state acquire such power, see § 81-12-151.

JUDICIAL DECISIONS

1.-10. [Reserved for future use.]
11. Under former § 81-11-77.

1.-10. [Reserved for future use.]

11. Under former § 81-11-77.

Since the rights vested in a state chartered savings and loan association by virtue of its charter amendment, changing its domicil from Columbus to Oxford, including the right to establish and maintain an office in Oxford, were rights created prior to the effective date of Code 1942, §§ 5288-01 et seq., the board of savings and loan associations could not precipitately annul or modify such rights in view of this section. North Miss. Sav. & Loan Ass'n v. Confederate States Sav. & Loan Ass'n, 250 Miss. 463, 166 So. 2d 119 (1964).

RESEARCH REFERENCES

CJS. 12 C.J.S., Building and Loan Associations, Savings and Loan Associations, and Credit Unions §§ 71 et seq.

§ 81-12-51. Additional powers of capital stock associations.

A capital stock savings and loan association (hereinafter referred to as a "capital stock association") shall have the powers enumerated in the preceding section, and shall have the following additional powers:

(a) Capital stock may be issued as follows:

(i) A capital stock association may issue the shares of stock authorized by its articles of incorporation and none other. Capital stock shall have the par value as stated in the articles of incorporation and, with the prior approval of the commissioner, may consist of common stock and preferred stock, which may be divided into classes and classes into series. Each kind, class and series may have such distinguishing characteristics, including designations, preferences, or restrictions as regards dividends, redemption, voting powers or restrictions or qualifications of voting powers as are imposed in the articles of incorporation. Restrictions and qualifications of voting powers so imposed shall control in any case in which any vote or consent of stockholders is now or hereafter required by statute unless such statute shall expressly provide a voting procedure to the contrary.

(ii) With the prior approval of the commissioner, shares of preferred or special stock of any class may be divided by number from time to time into, and issued in, designated series. Such shares of preferred or special stock of any class or series thereof shall have such relative rights and preferences with regard to dividend rates, redemption rights, conversion privileges, voting powers and other distinguishing characteristics, as shall be stated and expressed with respect to such class or series, either in the articles of incorporation or in the resolution or resolutions providing for the issue of such stock adopted by the board of directors of the corporation.

(iii) Except for stock issued pursuant to a plan of merger, consolidation or conversion from a mutual to a stock association or other type of reorganization which has been approved as provided herein, the consideration for the issuance of voting capital stock, the par value of which shall be maintained as the permanent capital of the association, except as otherwise provided in subparagraph (a)(iv) of this section, shall be paid in cash, and any excess shall be credited to paid-in surplus which shall not be available for dividends or other distribution to stockholders, except upon liquidation.

(iv) Except as provided herein, the total of the par values of all outstanding shares of voting capital stock shall be the permanent capital of the association and shall not be retired until final liquidation of the association. Notwithstanding the foregoing limitation, a capital stock association may reduce its permanent capital through a reduction of its outstanding voting capital stock pursuant to a plan adopted by its board of directors, and approved by an affirmative vote of a majority of the shares eligible to vote, and by an affirmative vote of two-thirds (⅔) of those shares present and voting, in person or by proxy, at an annual or special meeting of the stockholders of the association. In the event approval of any such plan for the reduction of stock as herein provided shall result in fractional shares, the association may acquire such fractional shares of its own stock by tender of payment of the price per share prior to such reduction as stipulated in the plan. Such tender may be made by bank check drawn upon association funds payable to the record holders of such fractional shares and mailed United States postage prepaid to such holders at the last address of record with the association. Pursuant to such plan, a capital stock association may purchase or redeem whole shares of its own stock at the price per share stipulated in the plan upon written assent of the holders thereof prior to such reduction. No plan for the reduction of the permanent capital or outstanding voting capital stock of an association shall be effective without first obtaining the written consent of the commissioner.

(v) Unless otherwise provided by the articles of incorporation, every stockholder, upon the sale for cash of any new stock of the same kind, class or series as that which he already holds, shall have the right to purchase his pro rata share thereof, as nearly as may be done without issuance of fractional shares, at the price at which it is offered to others, which price must be in excess of par.

(vi) An association shall not make a loan secured by the pledge of its capital stock.

(vii) A capital stock association may sell any authorized but unissued shares of capital stock for cash at a price which must be in excess of par. No incentive stock shall be issued. Subject to the requirements of Section 81-12-51(a)(v), an association may employ an agent to sell those shares of authorized capital stock not necessary to meet the minimum capital and paid-in surplus requirements of Section 81-12-37, provided that the proposed agreement with the agent for the sale of such stock is approved by the commissioner before the association enters into such agreement.

(b) No capital stock savings and loan association shall declare or pay any dividend upon its common stock unless such association has received written approval by the Commissioner of Banking and Consumer Finance. Directors declaring a dividend in violation of the provisions of this section shall be personally liable to the full amount of the dividend so declared and it shall be the duty of the commissioner, upon discovering the payment of any such dividend, to forthwith make demand upon the directors that the same be restored to the association, and upon their failure so to do he shall cause suit to be brought against them in the chancery court of the county in which the association is located, either in his name or in the name of the association, to recover the same for the benefit of the association.

SOURCES: Laws, 1977, ch. 445, § 12; Laws, 1980, ch. 311, § 1; Laws, 1982, chs. 301, § 26; 426, § 2; reenacted, 1990 Ex Sess, ch. 52, § 27; Laws, 1993, ch. 441, § 27; Laws, 1994, ch. 622, § 59; Laws, 1996, ch. 400; reenacted without change, Laws, 1997, ch. 496, § 24; reenacted without change, Laws, 2001, ch. 488, § 25, eff from and after July 1, 2001.

Cross References — Minimum required capital, see § 81-12-37.

Stock ownership requirements for directors of certain reorganized associations, see § 81-12-83.

Reserve requirements, see § 81-12-113.

§ 81-12-53. Conversion of association organized under state law into federal association.

At an annual meeting or at any special meeting of the members called to consider such action, any mutual association as defined in this chapter may convert itself into a federal mutual savings association or federal mutual savings and loan association, hereinafter in this subsection called "federal association," in accordance with the provisions of the laws of the United States, as now or hereafter amended, upon an affirmative vote of fifty-one percent (51%) or more of the total number of votes of the members eligible to be cast. A copy of the minutes of the proceedings of such meeting of the members, verified by the affidavit of the secretary or an assistant secretary, shall be filed in the office of the commissioner within ten (10) days after the date of such meeting. A sworn copy of the proceedings of such meeting, when so filed, shall be presumptive evidence of the holding and action of such meeting. Any member challenging the accuracy of such minutes by sworn objection may appeal to the commissioner. Within three (3) months after the date of such meeting, the association shall take such action in the manner prescribed and authorized by the laws of the United States as shall make it a federal association. There shall be filed with the commissioner a copy of the charter issued to such federal association by the appropriate federal regulatory authority or a certificate showing the organization of such association as a federal association, certified by the secretary or assistant secretary of the appropriate federal regulatory authority. A similar copy of the charter, or of such certificate, shall be filed by the association with the Secretary of State. No failure to file any such instruments with either the commissioner or the Secretary of State shall affect the validity of such conversion. Upon the grant to any association of a charter by the appropriate federal regulatory authority, the association receiving such charter shall cease to b e an association incorporated under this chapter and shall no longer be subject to the supervision and control of the commissioner. Upon the conversion of any association into a federal association, the corporate existence of such association shall not terminate, but such federal association shall be deemed to be a continuation of the entity of the association so converted and all property of the converted association, including its rights, titles and interests in and to all property of whatever kind, whether real, personal or mixed, and things in action, and every right, privilege, interest and asset then existing, or pertaining to it, or which may inure to it, shall immediately by operation of law and without any conveyance or transfer and without any further act or deed remain and be vested in and continue and be the property of such federal association into which the association has converted itself, and such federal association shall have, hold and enjoy the same in its own right as fully and to the same extent as the same was possessed, held and enjoyed by the converting association, and such federal association, as of the time of the taking effect of such conversion, shall continue to have and succeed to all the rights, obligations and relations of the converting association. All pending actions and other judicial proceedings to which the converting association is a party shall not be deemed to have abated or to have discontinued by reason of such conversion, but may be prosecuted to final judgment, order or decree in the same manner as if such conversion into such federal association had not been made and such federal association resulting from such conversion may continue such action in its corporate name as a federal association, and any judgment, order or decree may be rendered for or against it which might have been rendered for or against the converting association theretofore involved in such judicial proceedings. Any association or corporation which has heretofore converted itself into a federal association under the provisions of the laws of the United States and has received a charter from the appropriate federal regulatory authority shall hereafter be recognized as a federal association, and its federal charter shall be given full recognition by the courts of this state to the same extent as if such conversion had taken place under the provisions of this section; however, there shall have been compliance with the foregoing requirements with respect to the filing with the commissioner of a copy of the federal charter or a certificate showing the organization of such association as a federal association.

SOURCES: Laws, 1977, ch. 445, § 13(1); reenacted, 1982, ch. 301 § 27; Laws, 1990 Ex Sess, ch. 52, § 28; Laws, 1993, ch. 441, § 28; reenacted and amended, 1994, ch. 622, § 60; reenacted without change, Laws, 1997, ch. 496, § 25; reenacted without change, Laws, 2001, ch. 488, § 26, eff from and after July 1, 2001.

Cross References — Applicability of provisions regarding property and other rights to federal association converting to association organized under state law, see § 81-12-55.

Applicability of provisions regarding property to associations converting to capital stock association, see § 81-12-57.

Applicability of provisions regarding property to capital stock association organized under state law being converted into federal association, see § 81-12-61.

RESEARCH REFERENCES

Am Jur. 13 Am. Jur. 2d, Building and Loan Associations § 236.

§ 81-12-55. Conversion of federal association into association organized under state law.

At an annual meeting or at any special meeting of the members or stockholders called to consider such action, any federal mutual or capital stock savings association or federal mutual or capital stock savings and loan association, hereinafter in this subsection called "federal association," may apply for conversion into a state-chartered association under this chapter upon an affirmative vote of fifty-one percent (51%) or more of the total number of votes of the members eligible to be cast or an affirmative vote of sixty-six and two-thirds percent (66-⅔%) or more of all the issued and outstanding stock of such federal association. Upon such affirmative vote, the federal association may apply for a certificate of authority by filing with the commissioner a certificate signed by its president or secretary which sets forth the corporate action herein prescribed and asserts that the institution has complied with the provisions of the laws of the United States. The federal association shall also file with the commissioner the plan of conversion and the proposed amendments to its articles of association as approved by the members or stockholders for the operation of the association as a state-chartered association. Upon receipt of such application, the commissioner shall examine all facts associated with the conversion. The expenses and costs incurred for such special examination shall be paid by the institution applying for permission to convert. The commissioner shall present his findings and recommendations to the State Board of Banking Review for consideration. Upon approval by the State Board of Banking Review, the commissioner shall issue a certificate of authority to the applicant allowing the conversion to proceed.

SOURCES: Laws, 1977, ch. 445, § 13(2); reenacted, 1982, ch. 301, § 28; Laws, 1990 Ex Sess, ch. 52, § 29; Laws, 1993, ch. 441, § 29; reenacted and amended, 1994, ch. 622, § 61; Laws, 1995, ch. 308, § 8; reenacted without change, Laws, 1997, ch. 496, § 26; reenacted without change, Laws, 2001, ch. 488, § 27, eff from and after July 1, 2001.

RESEARCH REFERENCES

Am Jur. 13 Am. Jur. 2d, Building and Loan Associations § 237.

§ 81-12-57. Conversion of association organized under state law or of federal association into capital stock association.

If the board of directors determines, and the commissioner concurs, that substantial business benefit to the association will or may result, and if federal law, regulations or administrative rulings authorize federal associations to convert to capital stock associations, the voting members of a mutual association organized pursuant to this chapter, or otherwise subject to the provisions of this chapter or a federal mutual savings or savings and loan association (hereinafter in this subsection referred to as a "federal association") located in this state may vote to convert the association into a total or partial capital stock association by adopting a plan of conversion which is approved by the commissioner.

(a) The plan of conversion must be approved at a meeting of voting members called to consider such action by an affirmative vote of fifty-one percent (51%) or more of the total number of votes eligible to be cast. The commissioner may approve or disapprove the plan of conversion in his discretion, but he shall not approve the plan unless he finds that the plan is fair and equitable to members of the association and that the interests of the savings account holders and the public are adequately protected. Notice of the meeting, giving the time, place and purpose thereof, together with a proxy statement and proxy form approved by the commissioner, covering all matters to be brought before the meeting, shall be mailed at least thirty (30) days prior thereto to the commissioner and to each voting member at his last address as shown on the books of the association. The notice shall advise the savings account holders of their right to the public hearing provided in Section 81- 12-59.

(b) Copies of the minutes of the meeting of members, verified by the affidavit of the secretary or assistant secretary of the association, shall be filed in the office of the department and with the appropriate federal regulatory authority within a reasonable time after the meeting. When so filed, the verified copies of the minutes are presumptive evidence of the holding of the meeting and of the action taken. Any member or stockholder challenging the accuracy of such minutes by sworn objection may appeal to the commissioner.

(c) The directors of the association shall execute and file with the supervisory authority proposed articles of incorporation as provided for in Section 81-12-25, together with an application for conversion and a firm commitment for, or evidence of, insurance of deposits and other accounts of a withdrawable type. The articles shall contain a statement that the corporation resulted from the conversion of a mutual or federal association to a capital stock association. If approved by the commissioner, he shall affix the same to the articles of incorporation. An authenticated copy of the articles of incorporation shall be filed with the Secretary of State and one (1) copy of the articles of incorporation and the certificate of incorporation shall be returned to the association. The association shall cease to be a mutual association at the time and on the date specified in the approved articles of incorporation.

(d) All the provisions regarding property and other rights contained in Section 81-12-53 shall apply to the conversion of a mutual or federal association to a capital stock association, so that the capital stock association shall be a continuation of the corporate entity of the mutual or federal association and continue to have all of its property and rights.

SOURCES: Laws, 1977, ch. 445, § 13(3); reenacted, 1982, ch. 301, § 29; Laws, 1990 Ex Sess, ch. 52, § 30; Laws, 1993, ch. 441, § 30; reenacted and amended, 1994, ch. 622, § 62; reenacted without change, Laws, 1997, ch. 496, § 27; reenacted without change, Laws, 2001, ch. 488, § 28, eff from and after July 1, 2001.

Cross References — Restriction on declaring dividends following conversion, see § 81-12-51.

§ 81-12-59. Conversion of association organized under state law or of federal association into capital stock association; hearing on plan of conversion; notice; costs.

With respect to a conversion arising under Section 81-12-57 above, the commissioner may hold a hearing upon the plan of conversion. A hearing may be held by the commissioner on his own motion or upon application of the converting association or any member thereof and shall be held upon application by the holders of five percent (5%) or more in amount of the association's savings accounts. All persons to whom it is proposed to issue capital stock in connection with the conversion may appear at any hearing, and notice of the time and place of the hearing shall be given to all such persons in person or by mail at least thirty (30) days before the hearing by the association. Evidence satisfactory to the commissioner that the notice has been given shall be submitted to the commissioner at least ten (10) days prior to the hearing. Following the hearing, the commissioner may approve the terms of the plan of conversion, may reject the same or approve the same upon condition that portions thereof may be modified. All costs to the state resulting from conversions under this section shall be paid by the association making application for conversion.

SOURCES: Laws, 1977, ch. 445, § 13(6); reenacted, Laws, 1982, ch. 301, § 30; Laws, 1990 Ex Sess, ch. 52, § 31; Laws, 1993, ch. 441, § 31; reenacted and amended, Laws, 1994, ch. 622, § 63; reenacted without change, Laws, 1997, ch. 496, § 28; reenacted without change, Laws, 2001, ch. 488, § 29, eff from and after July 1, 2001.

§ 81-12-61. Conversion of capital stock association organized under state law into federal association.

(1) A capital stock association organized under this chapter may vote to convert itself into a federal mutual or capital stock savings or savings and loan association, hereinafter in this subsection referred to as a "federal association," at any legal meeting called to consider the action. The required affirmative vote to effect the conversion shall be not less than sixty-six and two-thirds percent (66-⅔%) of the issued and outstanding stock of such association. Notice of the meeting giving the time, place and purpose thereof, together with a proxy statement and proxy form covering all matters properly brought before the meeting shall be mailed at least thirty (30) days prior thereto to the commissioner and the appropriate federal regulatory authority and to each stockholder at his last address as shown on the books of the association. A copy of the minutes of the proceedings of the meeting, verified by the affidavit of the secretary or an assistant secretary of the association, shall be filed in the office of the commissioner within ten (10) days after the date of the meeting. When filed, a verified copy of the proceedings of the meeting is presumptive evidence of the holding of the meeting and of the action taken. Any stockholder challenging the accuracy of such minutes by sworn objection may appeal to the commissioner. Within three (3) months after the date of the meeting, the

association shall take such further action, in the manner prescribed and authorized by the laws of the United States, as shall make it a federal association. Three (3) copies of the charter issued by the appropriate federal regulatory authority, or three (3) copies of a certificate showing the organization of the association as a federal association, certified by the secretary or an assistant secretary of the appropriate federal regulatory authority shall be filed with the commissioner. Upon the payment of the fees prescribed by law, the commissioner shall note the filing upon each of the copies and shall retain one (1) copy in his office, file one (1) copy with the Secretary of State, and return one (1) copy to the association. The failure to file the instruments with the commissioner shall not affect the validity of the conversion. Upon the grant to any association of a charter by the appropriate federal regulatory authority, the association shall cease to be an association incorporated under this chapter and shall no longer be subject to the supervision and control of the department. All provisions regarding property and other rights contained in Section 81-12-53 above apply to the conversion of a capital stock association into a federal association.

(2)(a) The plan of conversion must provide:

(i) That each savings account holder of the mutual association will receive a withdrawable account in the capital stock association equal in amount to his withdrawable account in the mutual association;

(ii) That each savings account holder of record as provided in paragraph (iii) will be entitled to receive voting stock or rights to purchase voting stock in equal proportion to the amount his account bears to all savings accounts;

(iii) That the record date fixed by the commissioner for determining savings account holders is to be used. During the month of January each year the commissioner shall publish a record date which shall be used in determining the respective interests of account holders. The date shall be not more than eighteen (18) months prior to its publication;

(iv) That the business purpose to be accomplished by the conversion is set forth with particularity;

(v) Such other information in such form as required by the commissioner to enable him to determine whether the plan is fair and equitable to members of the association and that the interest of the savings account holders and the public is adequately protected.

(b) A plan of conversion will not be considered unfair or inequitable merely because it contains provisions which provide:

(i) That shares of stock will be issued to savings account holders with or without cost;

(ii) That shares of stock will be issued with cost to all savings account holders and that no stock will be issued without cost;

(iii) That savings account holders will or will not have preemptive rights to all stock proposed to be issued;

(iv) That those persons who were savings account holders during a particular number of years have preemptive rights to purchase voting stock at the fair market value thereof;

(v) That employment contracts are provided for officers and employees of the association;

(vi) That no more than ten percent (10%) of the voting stock proposed to be issued pursuant to the plan of conversion is reserved by the association for stock options for officers and employees.

SOURCES: Laws, 1977, ch. 445, § 13 (4, 5); reenacted, Laws, 1982, ch. 301, § 31; Laws, 1990 Ex Sess, ch. 52, § 32; Laws, 1993, ch. 441, § 32; reenacted and amended, Laws, 1994, ch. 622, § 64; reenacted without change, Laws, 1997, ch. 496, § 29; reenacted without change, Laws, 2001, ch. 488, § 30, eff from and after July 1, 2001.

§ 81-12-63. Conversion prohibited; exceptions.

No conversion of an association or a federal association, direct or indirect, shall be permitted, except as specifically authorized by this chapter, Section 81-14-101 or Section 81-5-85.

SOURCES: Laws, 1977, ch. 445, § 13 (7); reenacted, Laws, 1982, ch. 301, § 32; Laws, 1990 Ex Sess, ch. 52, § 33; Laws, 1992, ch. 489, § 114; Laws, 1993, ch. 441, § 33; Laws, 1994, ch. 622, § 65; Laws, 1997, ch. 542, § 8; reenacted and amended, Laws, 1997, ch. 496, § 30; reenacted without change, Laws, 2001, ch. 488, § 31, eff from and after July 1, 2001.

Joint Legislative Committee Note — Section 8 of ch. 542, Laws of 1997, effective from and after passage (approved April 10, 1997) amended this section. Section 30 of ch. 496, Laws of 1997, effective July 1, 1997, also amended this section. As set out above, this section reflects the language of Section 30 of ch. 496, Laws of 1997, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, the amendment with the latest effective date shall supersede all other amendments to the same section taking effect earlier.

RESEARCH REFERENCES

Am Jur. 13 Am. Jur. 2d, Building and Loan Associations §§ 236, 237.

§ 81-12-65. Reorganization, merger and consolidation of associations.

Pursuant to a plan adopted by the board of directors and approved by the commissioner as equitable to the members of the association and as not impairing the usefulness and success of other properly conducted associations in the community and serving the needs of the community, an association shall have power to reorganize or to merge or consolidate with another association or federal association within its primary lending area, provided that the plan of such reorganization, merger or consolidation shall be approved at an annual meeting or at any special meeting of the members or stockholders called to consider such action by an affirmative vote of fifty-one percent (51%) or more of the total number of votes of the members or an affirmative vote of sixty-six and two-thirds percent (66-⅔%) of those shares of stock of such association voted, in person or by proxy. Any such plan must set forth (a) the names of the associations proposing to merge or consolidate and the name of the association into which they propose to merge or consolidate, which is herein designated as "the surviving association"; (b) the terms and conditions of the proposed merger or consolidation and the mode of carrying it into effect; (c) the manner and basis of converting the savings accounts of each merging or consolidating association into savings accounts of the surviving association; (d) the manner and basis of the cancellation and issuance of the capital stock of the merging and surviving associations; (e) a statement of any changes in the articles of incorporation of the surviving association to be effected by the merger or consolidation; (f) a statement of the contracts pertaining to the employment, or the retention as consultant, of officers and directors of the merged or consolidated association; and (g) such other provisions with respect to the proposed merger or consolidation as are deemed necessary or desirable by the boards of directors or the commissioner. In al l cases the corporate continuity of the resulting corporation shall possess the same incidents as that of an association which has converted in accordance with this chapter. No association, directly or indirectly, shall reorganize, merge, consolidate, or acquire substantially all of the assets of or assume substantially all of the liabilities of any financial institution or any other organization, person or entity, except as specifically authorized by this chapter. The charter of any association which does not survive a reorganization, merger or consolidation shall be surrendered to the commissioner and the Secretary of State on the effective date of such reorganization, merger, or consolidation and promptly cancelled by him.

SOURCES: Laws, 1977, ch. 445, § 14; Laws, 1982, chs. 301, § 33; 426, § 3; reenacted, Laws, 1990 Ex Sess, ch. 52, § 34; Laws, 1993, ch. 441, § 34; reenacted and amended, Laws, 1994, ch. 622, § 66; reenacted without change, Laws, 1997, ch. 496, § 31; reenacted without change, Laws, 2001, ch. 488, § 32, eff from and after July 1, 2001.

Cross References — Applicability of the limitations contained in this section to termination of associations, see § 81-12-69.

RESEARCH REFERENCES

Am Jur. 13 Am. Jur. 2d, Building and Loan Associations § 235.

4 Am. Jur. Legal Forms 2d, Building and Savings and Loan Associations §§ 48:41 et seq. (merger of building and savings and loan associations).

CJS. 12A C.J.S., Building and Loan Associations, Savings and Loan Associations, and Credit Unions §§ 137, 138.

§ 81-12-66. Ownership by holding company.

(1) Notwithstanding any other provision of law, any stock savings association may simultaneously with its incorporation or conversion to a stock savings association provide for its ownership by a holding company. In the case

of a conversion, members of the converting savings association shall have the right to purchase capital stock of the holding company in lieu of capital stock of the converted savings association in accordance with Section 81-12-61, Mississippi Code of 1972.

(2) Notwithstanding any other provision of law, any stock savings association may reorganize its ownership to provide for ownership by a holding company, upon adoption of a plan of reorganization by a favorable vote of not less than two-thirds (⅔) of the members of the board of directors of the savings association and approval of such plan of reorganization by the holders of not less than a majority of the issued and outstanding shares of stock of the savings association. The plan of reorganization shall provide that (a) the resulting ownership shall be vested in a Mississippi corporation; (b) all stockholders of the stock savings association shall have the right to exchange shares; (c) the exchange of stock shall not be subject to state or federal income taxation; (d) stockholders not wishing to exchange shares shall be entitled to dissenters' rights as provided under Section 79-4-13.01 et seq., Mississippi Code of 1972; and (e) the plan of reorganization is fair and equitable to all stockholders.

SOURCES: Laws, 1997, ch. 542, § 9; reenacted without change, Laws, 2001, ch. 488, § 33, eff from and after July 1, 2001.

§ 81-12-67. Acquisition of controlling interest in capital stock association; certificate of approval; definitions; restrictions on ownership or control; reports; examinations.

(1) In any case in which a person or group of persons propose to purchase or acquire voting stock of any capital stock association, which purchase or acquisition would cause such person or group of persons to have control, as defined in subsection (3) of this section, of the association, such person or group of persons shall first make application to the commissioner for a certificate of approval of such purchase or acquisition. The application shall contain the name and address of the proposed new owner or owners of voting stock, and the commissioner shall issue the certificate of approval only after he has become satisfied, by a hearing or otherwise, that the proposed new owner or owners of voting stock are qualified by character, experience and financial responsibility to control the association in a legal and proper manner and that the interest of the stockholders, depositors and creditors of the association and the interest of the public generally will not be jeopardized by the proposed purchase or acquisition of voting stock.

(2) As used in this section, unless the context otherwise requires:

(a) "Business organization" or "company" means any corporation, partnership, trust, joint stock company or similar organization, but does not include any company the majority of the stock of which is owned by the United States or this state, by an officer of the United States or this state in his official capacity, or by an instrumentality of the United States or this state.

(b) "Savings and loan holding company" means any company which directly or indirectly controls an association or controls any other company which is a savings and loan holding company by virtue of this section.

(c) "Person" means an individual or company.

(d) "Subsidiary" of a person means any company which is controlled by such person or by a company which is a subsidiary of such person by virtue of this section.

(3) For purposes of this section, a business organization shall be deemed to have control of an association or any other business organization if the business organization:

(a) Directly or indirectly, or acting in concert with one or more persons or through one or more subsidiaries, owns, controls, holds with powers to vote, or holds proxies representing, more than twenty-five percent (25%) of the voting stock of such association or other business organization;

(b) Controls in any manner the election of a majority of the directors of such association or other business organization;

(c) Exercises a controlling influence over the management or policies of such association or other business organization.

(4) The following restrictions shall apply to ownership or control of associations in this state:

(a) Unless organized pursuant to the laws of this state, and not controlled by a business organization organized under the laws of another jurisdiction, no business organization shall either directly or indirectly control any association located in this state.

(b) No business organization shall acquire control of a capital stock association located in this state without first obtaining the prior written approval of the commissioner. Prior to such acquisition, such business organization shall file an application with the commissioner containing such information as the commissioner may require and as will aid in determining that the acquisition will not be detrimental to the public interest.

(5) Each savings and loan holding company and each subsidiary thereof shall file such reports as the commissioner may require from time to time or as required by this chapter. Each savings and loan holding company and each subsidiary thereof shall be subject to such examination as the commissioner shall prescribe or as required by this chapter. The cost of such examinations shall be assessed against such holding company and paid to the State Treasurer to the credit of the department.

SOURCES: Laws, 1977, ch. 445, § 15; reenacted, Laws, 1982, ch. 301, § 34; Laws, 1990 Ex Sess, ch. 52, § 35; Laws, 1993, ch. 441, § 35; reenacted and amended, Laws, 1994, ch. 622, § 67; reenacted without change, Laws, 1997, ch. 496, § 32; reenacted without change, Laws, 2001, ch. 488, § 34, eff from and after July 1, 2001.

§ 81-12-69. Termination of association; liquidation of assets; surrender of charter.

(1) Subject to the limitations of Section 81-12-65 of this chapter, any association may, at any special meeting of the members or stockholders called to consider such action, terminate its existence in accordance with the provisions of this section upon an affirmative vote of fifty-one percent (51%) or more of the total number of votes of members, in the case of a mutual association, or an affirmative vote of sixty-six and two-thirds percent (66-⅔%) of all the issued and outstanding stock, in the case of a capital stock association.

(2) Upon such vote, five (5) copies of a certificate of dissolution, which shall state the vote cast in favor of dissolution, shall be signed by two (2) officers and acknowledged before an officer competent to take acknowledgments of deeds. Five (5) copies of such certificate shall be filed with the commissioner, who shall examine such association, and, if he finds that it is not in an impaired condition, shall so note, together with his approval of such dissolution, upon all the copies of the certificate of dissolution. The commissioner shall place a copy in the permanent files in his office, file a copy with the Secretary of State, and return the remaining copies to the parties filing the same.

(3) Upon such approval, the association shall be dissolved and shall cease to carry on business but nevertheless shall continue as a corporate entity for the sole purpose of paying, satisfying and discharging existing liabilities and obligations, collecting and distributing assets, and doing all acts required to adjust, wind up and dissolve its business and affairs.

(4) The board of directors shall act as trustees for liquidation as provided in this section. They shall proceed as quickly as may be practicable to wind up the affairs of the association and, to the extent necessary or expedient to that end, shall exercise all the powers of such dissolved association and, without prejudice to the generality of such authority, may fill vacancies, elect officers, carry out the contracts, make new contracts, borrow money, mortgage or pledge the property, sell its assets at public or private sale, or compromise claims in favor of or against the association, apply assets to the discharge of liabilities, distribute assets either in cash or in kind among savings account members or savings account holders according to their respective pro rata interests after paying or adequately providing for the payment of other liabilities, distribute assets either in cash or in kind among stockholders, and perform all acts necessary or expedient to the winding up of the association. Provided, however, that upon liquidation, savings account holders shall be first paid the value of their accounts, if such funds are available, before any sums are paid to the stockholders. All deeds or other instruments shall be in the name of the association and executed by the president or a vice president and the secretary or an assistant secretary. The board of directors shall also have power to exchange or otherwise dispose of or to put in trust all or substantially all or any part of the assets, upon such terms and conditions and for such

considerations, which may be money, stock, bonds, shares or accounts of any insured association, or of any federal association, or other instruments for the payment of money, or other property, or other considerations, as the board of directors may deem reasonable or expedient, and may distribute such considerations or the proceeds thereof, or trust receipts, or certificates of beneficial interest among the savings account members or savings account holders in proportion to their pro rata interests therein.

(5) The association, during the liquidation of the assets of the association by the board of directors, shall continue to be subject to the supervision of the commissioner, and the board of directors shall report the progress of such liquidation to the commissioner from time to time as he may require. Upon completion of liquidation, the board of directors shall file with the commissioner a final report and accounting of such liquidation and shall surrender the charter of the association. If such report is approved, the commissioner shall promptly cancel said charter. The approval of such report by the commissioner shall operate as a discharge of the board of directors and each member thereof in connection with the liquidation of such association. No such dissolution or any action of the board of directors in connection therewith shall impair any contract right between such association and any borrower or other person or persons or the vested rights of any member or savings account holder of such association.

SOURCES: Laws, 1977, ch. 445, § 16; reenacted, 1982, ch. 301, § 35; Laws, 1990 Ex Sess, ch. 52, § 36; Laws, 1993, ch. 441, § 36; Laws, 1994, ch. 622, § 68; reenacted without change, Laws, 1997, ch. 496, § 33; reenacted without change, Laws, 2001, ch. 488, § 35, eff from and after July 1, 2001.

RESEARCH REFERENCES

CJS. 12A C.J.S., Building and Loan Associations, Savings and Loan Associations, and Credit Unions § 122.

§ 81-12-71. Annual meeting of members of association; voting; quorum.

(1) An annual meeting of the members of each mutual association shall be held as fixed in the bylaws of such association. Special meetings may be called as provided in the bylaws.

(2) The members who shall be entitled to vote at any meeting of the members shall be those who are members of record at the end of the calendar month next preceding the date of the meeting of members, except those who have ceased to be members. The number of votes which members shall be entitled to cast shall be in accordance with the books on the said date determinative of entitlement to vote.

(3) In the determination of all questions requiring action by the members, each member shall be entitled to cast one (1) vote, plus an additional vote for each One Hundred Dollars ($100.00) or fraction thereof of the withdrawal

value of savings accounts, if any, held by such member. No member, however, shall cast more than four hundred (400) votes.

(4) Voting by proxy at a meeting shall be permitted as set forth in the bylaws of the association. Constitution of a quorum shall be set forth in the bylaws of the association.

SOURCES: Laws, 1977, ch. 445, § 17; reenacted, Laws, 1982, ch. 301, § 36; Laws, 1990 Ex Sess, ch. 52, § 37; Laws, 1993, ch. 441, § 37; Laws, 1994, ch. 622, § 69; reenacted without change, Laws, 1997, ch. 496, § 34; reenacted without change, Laws, 2001, ch. 488, § 36, eff from and after July 1, 2001.

§ 81-12-73. Annual meeting of stockholders of capital stock associations; notice; voting; quorum.

(1) An annual meeting of stockholders of capital stock associations shall be held as fixed in the bylaws of the association. Whenever the provisions of this chapter, the articles of incorporation, or the bylaws require or authorize the stockholders to take any action at an annual or special meeting, a notice of such meeting, signed by the secretary or other officer permitted by the bylaws, shall be mailed to each stockholder entitled to vote at such meeting, at his address as it appears on the records of the corporation, not less than ten (10) nor more than sixty (60) days before the date set for such meeting. The articles of incorporation or bylaws may require that such notice also be published in one or more newspapers. The notice shall state the purpose of the meeting, a general statement of the business to be transacted, and the time and place it is to be held. Such notice shall be sufficient for said meeting and any adjournment thereof unless otherwise provided in the articles of incorporation or bylaws. If any stockholder shall transfer any of his stock after notice, it shall not be necessary to notify the transferee. Such meetings shall be held within the state and within the county in which the home office of the association is located. Any stockholder may waive notice of any meeting either before, at or after the meeting.

(2) Unless otherwise provided in the articles of incorporation, every such stockholder shall be entitled at such meeting, and upon each proposal presented at such meeting, to one (1) vote for each share of voting stock recorded in his name on the books of the corporation on the record date fixed as above provided or, if no such record date was fixed, on the day of meeting. The books of record of stockholders shall be produced at any stockholders' meeting upon the request of any stockholder.

(3) The stockholders record date and voting by proxy at any meeting shall be established and permitted, respectively, as set forth in the bylaws of the association. Constitution of a quorum shall be set forth in the bylaws of the association.

SOURCES: Laws, 1977, ch. 445, § 18; reenacted, Laws, 1982, ch. 301, § 37; Laws, 1990 Ex Sess, ch. 52, § 38; Laws, 1993, ch. 441, § 38; Laws, 1994, ch. 622, § 70; reenacted without change, Laws, 1997, ch. 496, § 35; reenacted without change, Laws, 2001, ch. 488, § 37, eff from and after July 1, 2001.

§ 81-12-75. Membership fees prohibited.

An association shall not directly or indirectly charge any membership, admission, withdrawal or any other fee or sum of money for the privilege of becoming, remaining or ceasing to be a member or savings account holder of the association.

SOURCES: Laws, 1977, ch. 445, § 19; reenacted, Laws, 1982, ch. 301, § 38; Laws, 1990 Ex Sess, ch. 52, § 39; Laws, 1993, ch. 441, § 39; Laws, 1994, ch. 622, § 71; reenacted without change, Laws, 1997, ch. 496, § 36; reenacted without change, Laws, 2001, ch. 488, § 38, eff from and after July 1, 2001.

§ 81-12-77. Inspection of books and records of association; confidential nature of certain books and records; access by members; procedure for members to communicate with other members with reference to questions to be presented at annual meeting.

(1) Every member, savings account holder or borrower shall have the right to inspect the books and records of an association as pertain to his loan or savings account. Otherwise, the right of inspection and examination of the books and records shall be limited (a) to the commissioner or his duly authorized representatives as provided in this chapter, (b) to persons duly authorized to act for the association, (c) officers and directors of the association, and (d) to any federal or state instrumentality or agency authorized to inspect or examine the books and records of an insured association. The books and records pertaining to the accounts and loans of members, savings account holders, and borrowers shall be kept confidential by the association, its directors, officers and employees, and by the commissioner, his examiners and representatives, except where the disclosure thereof shall be compelled by a court of competent jurisdiction, and no member or any other person shall have access to the books and records or shall be furnished or shall possess a partial or complete list of the members, savings account holders, or borrowers except upon express action and authority of the board of directors. This shall in no way be construed to prevent the commissioner from performing his duties under this chapter in any form permitted by law.

(2) In the event, however, that any member or members desire to communicate with the other members of the association with reference to any question pending or to be presented for consideration at a meeting of the members, the association shall furnish upon request a statement of the approximate number of members of the association at the time of such request, and an estimate of the cost of forwarding such communication. The requesting member or members shall then submit the communication, together with a sworn statement that the proposed communication is not for any reason other than the business welfare of the association, to the commissioner who, if he finds it to be appropriate, truthful and in the best interests of the association and its members, shall execute a certificate setting out such findings, forward

the certificate together with the communication, which may be sealed and its contents protected, to the association, and direct that the communication be prepared an d mailed by the association to the members upon the requesting member's or members' payment to it of the expense of such preparation and mailing. If the commissioner finds such proposed communication to be inappropriate, untruthful or contrary to the best interests of the association and its members, he shall have the discretion to make any disposition of the request to communicate which he deems proper and he shall execute a certificate setting out such findings and deliver it to the requesting member together with his order making disposition of the request.

SOURCES: Laws, 1977, ch. 445, § 20; reenacted, Laws, 1982, ch. 301, § 39; Laws, 1990 Ex Sess, ch. 52, § 40; Laws, 1993, ch. 441, § 40; Laws, 1994, ch. 622, § 72; reenacted without change, Laws, 1997, ch. 496, § 37; reenacted without change, Laws, 2001, ch. 488, § 39, eff from and after July 1, 2001.

RESEARCH REFERENCES

Am Jur. 13 Am. Jur. 2d, Building and Loan Associations § 311.

CJS. 12 C.J.S., Building and Loan Associations, Savings and Loan Associations, and Credit Unions §§ 40, 41.

§ 81-12-79. Call reports.

The commissioner shall call upon each association for the reports required in this section. Such calls shall be made by the commissioner in writing by letter or other similar means of written communications for the same dates and as often as calls are issued by the appropriate federal regulating authority for reports from federal associations. The commissioner shall prescribe the forms for such reports. The reports shall be sworn to by either the president, vice president or cashier of the association making them, attested by not less than two (2) of the board of directors, and shall exhibit in detail, under appropriate heads, the total resources and total liabilities of the association on the day specified by the commissioner. Associations shall transmit to the department such call reports within a time limitation established by regulation by the commissioner; however, such time limitation cannot exceed that set by the Federal Deposit Insurance Corporation for state insured associations. For any failure or delay in furnishing this report, the president, vice president or cashier of any such association, so in default, and the members of the board of directors of the association refusing to attest the report, shall be subject to an administrative fine, which may be imposed by the commissioner, of Fifty Dollars ($50.00) a day for each day while in such default.

SOURCES: Laws, 1977, ch. 445, § 21; reenacted, Laws, 1982, ch. 301, § 40; Laws, 1990 Ex Sess, ch. 52, § 41; Laws, 1993, ch. 441, § 41; reenacted and amended, Laws, 1994, ch. 622, § 73; Laws, 1996, ch. 400, § 19; reenacted

without change, Laws, 1997, ch. 496, § 38; reenacted without change, Laws, 2001, ch. 488, § 40, eff from and after July 1, 2001.

§ 81-12-81. Board of directors to direct business of association; number and qualifications of members; oath; procedure for filling vacancies.

(1) The business of the mutual association shall be directed by a board of directors of not less than five (5) nor more than fifteen (15) as determined by, and elected by, ballot from among the members by a plurality of the votes of the members present or voting by proxy. At all times at least two-thirds (⅔) of the directors shall be bona fide residents of this state.

(2) In order to qualify as a director, a member of an association must hold individually, or jointly with his spouse, a savings account, the withdrawal value of which is at least Five Hundred Dollars ($500.00); provided that if the assets of the association exceed Five Million Dollars ($5,000,000.00), the withdrawal value of such account must be at least One Thousand Dollars ($1,000.00). No member shall be eligible for election or shall serve as a director or officer of an association who has been convicted of a criminal offense involving dishonesty or a breach of trust. A director shall cease to be a director when he ceases to be a member, or when he is adjudicated a bankrupt or is convicted of a criminal offense as herein provided, or when the net equity above loans of all savings accounts in the association held by him aggregates for a period of thirty (30) consecutive days less than the minimum required to be eligible for election as a director, but no action of the board of directors shall be invalidated through the participation of such director in such action unless the vote of such director be challenged prior to such action; provided that if a director becomes ineligible under the terms of this subsection by reason of the exercise by the association of the right of redemption of savings accounts provided for in Section 81-12-153 he shall remain validly in office until the expiration of his term or until he otherwise becomes ineligible, resigns or is removed, whichever may occur first.

(3) Directors shall be classified as set forth in the bylaws of the association.

(4) The authorized number of directors determined by the members within the limits hereinabove specified may subsequently be increased or decreased only by vote of the members.

(5) Each director, upon assuming office, shall take an oath that he will, so far as the duty devolves on him, diligently and honestly administer the affairs of the association and will not knowingly violate or permit to be violated, any of the provisions of this chapter, and a written copy of such oath shall be filed with the commissioner.

(6) If the members fail to elect a director to fill each vacancy created by any such increase, the directors may fill such vacancy by electing a director to serve until the next annual meeting of the members, at which time a director shall be elected to fill the vacancy for the unexpired term of the class of director in which such vacancy exists.

(7) Whenever under the provisions hereof the number of directors is changed and vacancies caused by such change are filled, the directors so elected shall be classified in accordance with the provisions of the bylaws of the association.

(8) Any vacancy among directors, not so filled by the members, may be filled by a majority vote of the remaining directors, though less than a quorum, by electing a director to serve until the next annual meeting of the members, at which time a director shall be elected to fill the vacancy for the unexpired term for the class of director in which such vacancy exists. In event of a vacancy on the board of directors from any cause, the remaining directors shall have full power and authority to continue direction of the association until such vacancy is filled.

SOURCES: Laws, 1977, ch. 445, § 22; reenacted, Laws, 1982, ch. 301, § 41; Laws, 1990 Ex Sess, ch. 52, § 42; Laws, 1993, ch. 441, § 42; Laws, 1994, ch. 622, § 74; reenacted without change, Laws, 1997, ch. 496, § 39; reenacted without change, Laws, 2001, ch. 488, § 41, eff from and after July 1, 2001.

RESEARCH REFERENCES

CJS. 12 C.J.S., Building and Loan Associations, Savings and Loan Associations, and Credit Unions §§ 22, 23.

§ 81-12-83. Board of directors to manage business and exercise powers of capital stock association; election of members; term of office; qualifications; oath; vacancies.

(1) The business of a capital stock association shall be managed and its powers exercised by a board of directors. The board shall consist of not less than five (5) adult natural persons who shall be elected at the annual meeting of stockholders in the following manner:

At each election for directors every shareholder entitled to vote at such election shall have the right to vote, in person or by proxy, the number of shares owned by him for as many persons as there are directors to be elected and for whose election he has a right to vote.

(2) The term of office of the directors shall be for one (1) year; provided that when the board of directors shall consist of nine (9) or more members, in lieu of electing the whole number of directors annually, the articles of incorporation may provide that the directors be divided into either two (2) or three (3) classes, each class to be as nearly equal in number as possible, the term of office of directors of the first class to expire at the first annual meeting of the shareholders after their election; that of the second class to expire at the second annual meeting after their election; and that of the third class, if any, to expire at the third annual meeting after their election. At each annual meeting after such classification, the number of directors equal to the number of the class whose term expires at the time of such meeting shall be elected to hold office until the second succeeding annual meeting, if there be two (2)

classes, or until the third succeeding annual meeting, if there be three (3) classes. No classification of directors shall be effective prior to the first annual meeting of shareholders.

(3) Every director must, during his whole term of service, be a citizen of the United States, and at least three-fifths (3/5) of the directors must have resided in this state for at least one (1) year preceding their election and must be residents therein during their continuance in office. No person shall be eligible for election or shall serve as a director or officer of a capital stock association who has been convicted of a criminal offense. A director or officer shall automatically cease to be a director when he is adjudicated a bankrupt or convicted of a criminal offense. However, no action of the board of directors shall be invalidated through the participation of such director in such action unless challenge is made to such director's vote prior to such action. Each director shall, in his own name, own capital stock in, or have a deposit relationship with, the association on an unencumbered basis as follows:

(a) For stock associations under Fifty Million Dollars ($50,000,000.00) in assets, stock ownership in the institution or its holding company of Two Thousand Five Hundred Dollars ($2,500.00) in market value at time of purchase; or

(b) For mutual associations under Fifty Million Dollars ($50,000,000.00) in assets, a Two Thousand Five Hundred Dollar ($2,500.00) deposit relationship; or

(c) For stock associations over Fifty Million Dollars ($50,000,000.00) in assets, stock ownership in the institution or its holding company of Five Thousand Dollars ($5,000.00) in market value at the time of purchase; or

(d) For mutual associations over Fifty Million Dollars ($50,000,000.00) in assets a Five Thousand Dollar ($5,000.00) deposit relationship.

For associations that cross the Fifty Million Dollar ($50,000,000.00) threshold, the commissioner shall allow a reasonable period for the directors to comply with the ownership interest requirement.

(4) Each director, upon assuming office, shall take an oath that he will, so far as the duty devolves on him, diligently and honestly administer the affairs of such capital stock association and will not knowingly violate or permit to be violated, any of the provisions of this chapter, and a written copy of such oath shall be filed with the commissioner.

(5) The board of directors of each capital stock association shall hold meetings as set forth in the bylaws of the association.

(6) Vacancies on the board of directors may be filled at a meeting by the stockholders called for that purpose.

SOURCES: Laws, 1977, ch. 445, § 24; reenacted, Laws, 1982, ch. 301, § 43; Laws, 1990 Ex Sess, ch. 52, § 43; Laws, 1993, ch. 441, § 43; Laws, 1994, ch. 622, § 75; Laws, 1996, ch. 400, § 20; reenacted without change, Laws, 1997, ch. 496, § 40; reenacted without change, Laws, 2001, ch. 488, § 42, eff from and after July 1, 2001.

Cross References — Waiver of requirements of this section for director appointed to replace temporarily removed director, see § 81-12-24.

RESEARCH REFERENCES

Am Jur. 13 Am. Jur. 2d, Building and Loan Associations § 38.

5 Am. Jur. Pl & Pr Forms (Rev), Building and Loan Associations, Forms 11 et seq. (directors and officers).

CJS. 12 C.J.S., Building and Loan Associations, Savings and Loan Associations, and Credit Unions §§ 22, 23.

§ 81-12-85. Bonding of association's officers, attorneys, employees, agents and directors.

Each association shall provide and maintain a fidelity bond covering its officers, attorneys, employees, agents and directors when performing the duties of officers or employees, in the form and amount required by the commissioner, but in no event less than One Hundred Thousand Dollars ($100,000.00). No bond coverage will be required of any agent which is a financial institution insured by the Federal Deposit Insurance Corporation. Such bonds shall provide that a cancellation thereof either by the surety or by the insured shall not become effective unless and until thirty (30) days' notice in writing first shall have been given to the commissioner, unless he shall have approved such cancellation earlier.

SOURCES: Laws, 1977, ch. 445, § 24; reenacted, Laws, 1982, ch. 301, § 43; Laws, 1990 Ex Sess, ch. 52, § 44; Laws, 1993, ch. 441, § 44; reenacted and amended, Laws, 1994, ch. 622, § 76; Laws, 1996, ch. 400, § 21; reenacted without change, Laws, 1997, ch. 496, § 41; reenacted without change, Laws, 2001, ch. 488, § 43, eff from and after July 1, 2001.

RESEARCH REFERENCES

CJS. 12 C.J.S., Building and Loan Associations, Savings and Loan Associations, and Credit Unions §§ 22, 23, 32.

§ 81-12-87. Fiduciary relationship of directors and officers; disclosure of personal interests; restrictions governing conduct; penalty.

Directors and officers occupy a fiduciary relationship to the association of which they are directors or officers, and no director or officer shall engage or participate, directly or indirectly, in any business or transaction conducted on behalf of or involving the association, which would result in a conflict of his own personal interests with those of the association which he serves. Without limitation by any of the specific provisions of any of the subsections hereof, the commissioner may require the disclosure by directors, officers and employees of any personal interest, directly or indirectly, in any business or transactions on behalf of or involving the association and of their control of or active participation in enterprises having activities related to the business of the association. The following restrictions governing the conduct of directors and officers expressly are specified, but such specification is not to be construed in any manner as excusing such persons from the observance of any other aspect of the general fiduciary duty owed by them to the association which they serve:

(a) From and after January 1, 1979, no officer or director of an association shall hold office as a director or officer of another thrift institution the principal office of which is located in the association's primary lending area.

(b) No director of an association shall receive remuneration as director except reasonable fees for service as a director or for service as a member of a committee of directors, except that nothing herein contained shall be deemed to prohibit or in any way to limit any right of a director who is also an officer or employee of or attorney for the association to receive compensation for service as an officer, employee or attorney.

(c) Loans aggregating fifteen percent (15%) of the unimpaired capital and unimpaired surplus may be made by any association to any director or executive officer thereof, as defined in Regulation O promulgated by the Board of Governors of the Federal Reserve System, less existing direct and indirect liabilities thereto, upon affirmative approval of a majority of all directors spread on the minutes of a directors' meeting held before such loan is made, provided, such loan is made on substantially the same terms and conditions extended to other borrowers for comparable transactions. Any association may lend to any such director or executive officer thereof, upon affirmative approval of a majority of all directors spread on the minutes of a directors' meeting held before such loan is made, not more than twenty percent (20%) of the unimpaired capital and unimpaired surplus of the association, less the amount of existing direct and indirect liabilities, when secured; or when the portion thereof in excess of any amount loaned under the first provision hereof is secured by obligations of the United States government, the State of Mississippi, and the levee districts, counties, road districts, school districts, and municipalities of the State of Mississippi, obligations of any other state of the United States and other bonds of recognized character and standing, which are the subject of daily newspaper market quotations, provided such loan shall not exceed eighty percent (80%) of the market or par value (whichever is less) of the bonds or obligations offered as security. Any association may lend to any executive officer or director thereof upon affirmative approval of a majority of all directors spread on the minutes of a directors' meeting held before such loan is made, such amount as is safe and proper, when secured by warehouse receipts or shippers' order bills of lading representing actual existing values, provided the amount loaned shall not exceed eighty percent (80%) of the market value of the commodities representing the actual existing values, and loans of this nature shall be made payable on demand so that the security held therefor may be sold on any date and the proceeds thereof applied to the payment of the loan. However, an association's board of directors may, as shown in its minutes, give to an association officer the authority to make secured or unsecured loans to an executive officer or director of such association, without receiving the board's prior approval, in an amount that, when aggregated with the amount of all other extensions of credit to that person and to all related interests of that person, does not exceed the greater of Twenty-five Thousand Dollars ($25,000.00) or five percent (5%) of the association's unimpaired capital and unimpaired surplus.

However, no association shall extend credit to any director or executive officer thereof, in an amount that, when aggregated with all other extensions of credit to that person and to all related interests of that person, exceeds Five Hundred Thousand Dollars ($500,000.00) without documented prior affirmative approval of a majority of its directors.

Loans and discounts by an association to a director or executive officer thereof secured in full by funds on deposit in time or savings accounts with the lending association to the credit of the borrower shall not be restricted to the fifteen percent (15%) or twenty percent (20%) limitations herein prescribed.

The limitations of this section shall not apply where an executive officer or director shall bona fide purchase from the association at a reasonable price real or personal property acquired by the association in payment of debts due the association, provided such transactions are approved by a majority of the board of directors, such approval to be shown in their minutes; and, in cases where loans are made by branch offices, the sum total of loans made by any branch or branches and its parent association to such executive officer or director shall be computed as against the total capital stock and surplus of the parent association and its branch or branches. Loans heretofore made to executive officers or directors may be renewed or extended if in accord with sound banking practice.

(d) No director or officer shall have any interest, directly or indirectly, in the proceeds of a loan or investment or of a purchase or sale made by the association, unless such loan, investment, purchase or sale is authorized expressly by resolution of the board of directors, and unless such resolution is approved by vote of at least two-thirds (⅔) of the directors authorized by the association, any interested director taking no part in such vote.

(e) No director or officer shall have any interest, directly or indirectly, in the purchase at less than its face value of any evidence of a savings account, deposit or other indebtedness issued by the association.

(f) No director, association or officer thereof shall require, as a condition to the granting of any loan or the extension of any other service by the association, that the borrower or any other person undertake a contract of insurance or any other agreement, or understanding with respect to the furnishing of any other goods or services, with any specific company, agency or individual.

(g) No officer or director acting as proxy for a member or stockholder of record of an association shall exercise, transfer or delegate such vote or votes in any consideration of a private benefit or advantage, direct or indirect, accruing to himself, nor shall he surrender control or pass his office to any other for any consideration of a private benefit or advantage, direct or indirect. The voting rights of members, stockholders and directors shall not be subject to sale, barter, exchange or similar transaction, either directly or indirectly. Any officer or director who violates the provisions of this section shall be held accountable to the association for any increment and subject to the criminal penalty below.

(h) No director or officer shall solicit, accept or agree to accept, directly or indirectly, from any person other than the association any gratuity, compensation or other personal benefit for any action taken by the association or for endeavoring to procure any such action.

(i) Any violation of the provisions of this section shall be punishable by not more than five (5) years' imprisonment or a fine of not more than Five Thousand Dollars ($5,000.00).

SOURCES: Laws, 1977, ch. 445, § 25; reenacted, Laws, 1982, ch. 301, § 44; Laws, 1990 Ex Sess, Ch. 52, § 45; Laws, 1993, ch. 441, § 45; reenacted and amended, Laws, 1994, ch. 622, § 77; Laws, 1996, ch. 400, § 22; reenacted without change, Laws, 1997, ch. 496, § 42; reenacted without change, Laws, 2001, ch. 488, § 44, eff from and after July 1, 2001.

§ 81-12-89. Deposit of association funds; approval by directors.

No association shall deposit any of its funds, except with a depository approved by a vote of a majority of the directors authorized by the association, any director who is an officer, partner, director, or trustee of the depository so designated taking no part in such vote.

SOURCES: Laws, 1977, ch. 445, § 26; reenacted, Laws, 1982, ch. 301, § 45; Laws, 1990 Ex Sess, ch. 52, § 46; Laws, 1993, ch. 441, § 46; Laws, 1994, ch. 622, § 78; reenacted without change, Laws, 1997, ch. 496, § 43; reenacted without change, Laws, 2001, ch. 488, § 45, eff from and after July 1, 2001.

§ 81-12-91. Indemnification of director, officer or employee for expenses of action to which he is made a party by reason of his position.

Any person may be indemnified or reimbursed by the association for reasonable expenses, including, but not limited to, attorney's fees actually incurred by him in connection with any action, suit or proceeding, instituted or threatened, judicial or administrative, civil or criminal, to which he is made a party by reason of his being or having been a director, officer or employee of an association; however, no person shall be so indemnified or reimbursed, nor shall he retain any advancement or allowance for indemnification which may have been made by the association in advance of final disposition, in relation to such action, suit or proceeding in which and to the extent that he finally shall be adjudicated to have been guilty of a breach of good faith, to have been negligent in the performance of his duties or to have committed an action or failed to perform a duty for which there is a common law or a statutory liability. In addition, a person may, with the approval of the commissioner, be so indemnified or reimbursed for:

(a) Amounts paid in compromise or settlement of any action, suit or proceeding, including reasonable expenses incurred in connection therewith; or

(b) Reasonable expenses, including fines and penalties, incurred in connection with a criminal or civil action, suit or proceeding in which such person has been adjudicated guilty, negligent or liable, if it shall be determined by the board of directors and the commissioner that such person was acting in good faith and in what he believed to be the best interests of the association and without knowledge that the action was illegal and if such indemnification or reimbursement is approved at an annual or special meeting of the members or stockholders by a majority of the votes eligible to be cast. Amounts paid to the association, whether pursuant to judgment or settlement by any person within the meaning of this section, shall not be indemnified or reimbursed in any case.

SOURCES: Laws, 1977, ch. 445, § 27; reenacted, Laws, 1982, ch. 301, § 46; Laws, 1990 Ex Sess, ch. 52, § 47; Laws, 1993, ch. 441, § 47; reenacted and amended, Laws, 1994, ch. 622, § 79; reenacted without change, Laws, 1997, ch. 496, § 44; reenacted without change, Laws, 2001, ch. 488, § 46, eff from and after July 1, 2001.

§ 81-12-93. Management contracts.

No association shall make any management contract with any person or persons extending for more than three (3) years. Contracts in excess of one (1) year shall first be approved by the commissioner. No such contract shall permit an association to be managed on a commission basis.

SOURCES: Laws, 1977, ch. 445, § 28; reenacted, Laws, 1982, ch. 301, § 47; Laws, 1990 Ex Sess, ch. 52, § 48; Laws, 1993, ch. 441, § 48; Laws, 1994, ch. 622, § 80; reenacted without change, Laws, 1997, ch. 496, § 45; reenacted without change, Laws, 2001, ch. 488, § 47, eff from and after July 1, 2001.

§ 81-12-95. Records; minutes of meetings; business transactions.

Every association shall keep at the home office correct and complete minutes of the proceedings and meetings of members, stockholders, directors and the executive committee. Complete records of all business transacted at the home office shall be maintained at the home office, and control records of all business transacted at each branch office or agency shall be maintained at the home office, except as permitted below. However, any state savings association may cause any or all records at any time in its custody to be reproduced in a format of storage commonly used, whether electronic, imaged, magnetic, microphotographic, or otherwise, and any reproduction so made shall have the same force and effect as the original thereof and be admitted in evidence equally with the original.

SOURCES: Laws, 1977, ch. 445, § 29(1); reenacted, Laws, 1982, ch. 301, § 48; Laws, 1990 Ex Sess, ch. 52, § 49; Laws, 1993, ch. 441, § 49; Laws, 1994, ch. 622, § 81; reenacted without change, Laws, 1997, ch. 496, § 46; Laws, 2000, ch. 335, § 2; reenacted without change, Laws, 2001, ch. 488, § 48, eff from and after July 1, 2001.

Cross References — Record keeping — banks, see § 81-5-7.
Record keeping — credit unions, see § 81-13-73.
Record keeping — savings banks, see § 81-14-153.

§ 81-12-97. Records; branch offices; agents.

(1) Each branch office shall keep detailed records of all transactions at such branch office and shall furnish full control records to the home office, except as permitted below.

(2) Each agent of an association shall keep an original record of each transaction of business of the association and shall report promptly to the home office. Complete detailed permanent records of such transactions are not required to be maintained at such agency.

SOURCES: Laws, 1977, ch. 445, § 29(2, 3); reenacted, Laws, 1982, ch. 301, § 49; Laws, 1990 Ex Sess, ch. 52, § 50; Laws, 1993, ch. 441, § 50; Laws, 1994, ch. 622, § 82; reenacted without change, Laws, 1997, ch. 496, § 47; reenacted without change, Laws, 2001, ch. 488, § 49, eff from and after July 1, 2001.

§ 81-12-99. Records; maintenance by means of data processing services.

An association which determines to maintain any of its records by means of data processing services shall so notify the commissioner, in writing, at least ninety (90) days prior to the date on which such maintenance of records will begin. Such notification shall include identification of the records to be maintained by data processing services and a statement as to the location at which such records will be maintained. Any contract, agreement or arrangement made by an association pursuant to which data processing services are to be performed for such association shall be in writing and shall expressly provide that the records to be maintained by such services shall at all times be available for examination and audit.

SOURCES: Laws, 1977, ch. 445, § 29(4); reenacted, Laws, 1982, ch. 301, § 50; Laws, 1990 Ex Sess, ch. 52, § 51; Laws, 1993, ch. 441, § 51; Laws, 1994, ch. 622, § 83; reenacted without change, Laws, 1997, ch. 496, § 48; reenacted without change, Laws, 2001, ch. 488, § 50, eff from and after July 1, 2001.

§ 81-12-101. Records; forms and accounting principles; closing of books; description of assets.

(1) Every association shall use such forms and observe such accounting principles and practices as the commissioner may require from time to time.

(2) Every association shall close its books annually.

(3) No association by any system of accounting or any device of bookkeeping shall, either directly or indirectly, enter any of its assets upon its books in the name of any other person, partnership, association or corporation or under any title or designation that is not truly descriptive of such assets.

SOURCES: Laws, 1977, ch. 445, § 29(5-7); reenacted, Laws, 1982, ch. 301, § 51; Laws, 1990 Ex Sess, ch. 52, § 52; Laws, 1993, ch. 441, § 52; Laws, 1994, ch. 622, § 84; reenacted without change, Laws, 1997, ch. 496, § 49; reenacted without change, Laws, 2001, ch. 488, § 51, eff from and after July 1, 2001.

§ 81-12-103. Records; overvaluation of assets.

The commissioner, after a determination of value made in accordance with Section 81-12-177(8), may order that assets, individually or in the aggregate, to the extent that such assets are overvalued on an association's books, be charged off, or that a special reserve or reserves equal to such overvaluation be set up by transfers from undivided profits or reserves.

SOURCES: Laws, 1977, ch. 445, § 29(8, 9); reenacted, Laws, 1982, ch. 301, § 52; Laws, 1990 Ex Sess, ch. 52, § 53; Laws, 1993, ch. 441, § 53; reenacted and amended, Laws, 1994, ch. 622, § 85; Laws, 1996, ch. 400, § 23; reenacted without change, Laws, 1997, ch. 496, § 50; reenacted without change, Laws, 2001, ch. 488, § 52, eff from and after July 1, 2001.

§ 81-12-105. Records; real estate investments; appraisal.

(1) An association shall not carry any real estate on its books at a sum in excess of the total amount invested by such association on account of such real estate, including advances, costs, and improvements but excluding accrued but uncollected interest.

(2) Every association shall have appraised each parcel of real estate immediately following acquisition thereof. The report of each such appraisal shall be submitted in writing to the board of directors and shall be kept in the records of the association. In addition to his powers under Section 81-12-177(8) of this chapter, the commissioner may require the appraisal of real estate securing loans which are delinquent more than four (4) months.

SOURCES: Laws, 1977, ch. 445, § 29(10, 11); reenacted, Laws, 1982, ch. 301, § 53; Laws, 1990 Ex Sess, ch. 52, § 54; Laws, 1993, ch. 441, § 54; Laws, 1994, ch. 622, § 86; reenacted without change, Laws, 1997, ch. 496, § 51; reenacted without change, Laws, 2001, ch. 488, § 53, eff from and after July 1, 2001.

§ 81-12-107. Records; loan and investment.

Every association shall maintain complete loan and investment records in a manner prescribed by the commissioner. Detailed records necessary to make determinations of compliance by an association with the investment, liquidity, loan and other provisions of this chapter shall be maintained consistently and at all times, the record of each real estate loan or other secured loan or investment containing documentation to the satisfaction of the commissioner of the type, adequacy and completion of the security.

SOURCES: Laws, 1977, ch. 445, § 29(12); reenacted, Laws, 1982, ch. 301, § 54; Laws, 1990 Ex Sess, ch. 52, § 55; Laws, 1993, ch. 441, § 55; Laws, 1994, ch. 622, § 87; reenacted without change, Laws, 1997, ch. 496, § 52; reenacted without change, Laws, 2001, ch. 488, § 54, eff from and after July 1, 2001.

§ 81-12-109. Records; membership and stockholder.

Every association shall maintain membership and stockholder records, which shall show the name and address of the member or stockholder, the status of the member as a savings account holder, or an obligor, or a savings account holder and obligor, and the date of membership or ownership of stock. In the case of members holding a savings account the association shall obtain a savings account contract containing the signature of each holder of such account or his duly authorized representative, and shall preserve such contract in the records of the association.

SOURCES: Laws, 1977, ch. 445, § 29(13); reenacted, Laws, 1982, ch. 301, § 55; Laws, 1990 Ex Sess, ch. 52, § 56; Laws, 1993, ch. 441, § 56; Laws, 1994, ch. 622, § 88; reenacted without change, Laws, 1997, ch. 496, § 53; reenacted without change, Laws, 2001, ch. 488, § 55, eff from and after July 1, 2001.

§ 81-12-111. Records; reproduction by photostatic, photographic or microfilming process.

Any association may cause any or all records kept by such association to be copied or reproduced by any photostatic, photographic or microfilming process which correctly and permanently copies, reproduces or forms a medium for copying or reproducing the original record on a film or other durable material, and such association may thereafter dispose of the original record. Any such copy or reproduction shall be deemed to be an original record for all purposes and shall be treated as an original record in all courts or administrative agencies for the purpose of its admissibility in evidence. A facsimile, exemplification or certified copy of any such copy or reproduction reproduced from a film record shall, for all purposes, be deemed a facsimile, exemplification or certified copy of the original record.

SOURCES: Laws, 1977, ch. 445, § 29(14); reenacted, Laws, 1982, ch. 301, § 56; Laws, 1990 Ex Sess, ch. 52, § 57; Laws, 1993, ch. 441, § 57; Laws, 1994, ch. 622, § 89; reenacted without change, Laws, 1997, ch. 496, § 54; reenacted without change, Laws, 2001, ch. 488, § 56, eff from and after July 1, 2001.

§ 81-12-113. Reserves.

Every association shall set up and maintain the reserves required by the board and may set up and maintain such additional reserves as are permitted by this chapter. The commissioner shall fix the amount of each association's separate reserve account to be set up and maintained for the sole purpose of absorbing losses (termed in this chapter "general reserve"), but in no event shall such amount of such general reserve be less than the amount required by the Federal Deposit Insurance Corporation. Transfers to general reserve shall be made at such time or times as set by the commissioner.

SOURCES: Laws, 1977, ch. 445, § 30; reenacted, Laws, 1982, ch. 301, § 57; Laws, 1990 Ex Sess, ch. 52, § 58; Laws, 1993, ch. 441, § 58; reenacted and amended, Laws, 1994, ch. 622, § 90; reenacted without change, Laws, 1997, ch. 496, § 55; reenacted without change, Laws, 2001, ch. 488, § 57, eff from and after July 1, 2001.

§ 81-12-115. Savings liability of association to equal aggregate amount of savings accounts plus earnings; additions to accounts; responsibility of members for losses; assessment of accounts; declaration of earnings; preferences.

The savings liability of an association is not limited, but shall consist only of the aggregate amount of savings accounts of its members or savings account holders, plus earnings credited to such accounts, less redemption and withdrawal payments. Except as limited by the board of directors from time to time, a member or savings account holder may make additions to his savings accounts in such amounts and at such times as he may elect. The members or savings account holders of an association shall not be responsible for any losses which its savings liability shall not be sufficient to satisfy, and savings accounts shall not be subject to assessment. Earnings shall be declared in accordance with the provisions of this chapter. Except as provided in Section 81-12-153, no association shall prefer one (1) of its savings accounts over any other savings account as to the right to participate in earnings. No preference between savings account members or savings account holders shall be created with respect to the distribution of assets upon voluntary or involuntary liquidation, dissolution or winding up of an association. No association shall issue, sell, negotiate or advertise any type of savings account or debt security, except as authorized by this chapter, nor shall it contract with respect to any savings account or other account in a manner inconsistent with the provisions of this chapter.

SOURCES: Laws, 1977, ch. 445, § 31; reenacted, Laws, 1982, ch. 301, § 58; Laws, 1990 Ex Sess, ch. 52, § 59; Laws, 1993, ch. 441, § 59; Laws, 1994, ch. 622, § 91; reenacted without change, Laws, 1997, ch. 496, § 56; reenacted without change, Laws, 2001, ch. 488, § 58, eff from and after July 1, 2001.

§ 81-12-117. Savings accounts.

Savings accounts may be opened and held solely and absolutely in his own right by, or in trust or other fiduciary capacity for, any person, including an adult or minor individual, male or female, single or married, partnership, association, fiduciary, corporation or by a political subdivision or public or governmental unit, but only to the extent expressly authorized by the statutes of this state. Savings accounts shall be represented only by the account of each savings account holder on the books of the association, and such accounts or any interest therein shall be transferable only on the books of the association and upon proper written application by the transferee and upon acceptance by the association of the transferee as a savings account holder upon terms approved by the board of directors. The association may treat the holder of record of a savings account as the owner thereof for all purposes.

SOURCES: Laws, 1977, ch. 445, § 32(1); reenacted, Laws, 1982, ch. 301, § 59; Laws, 1990 Ex Sess, ch. 52, § 60; Laws, 1993, ch. 441, § 60; Laws, 1994, ch. 622, § 92; reenacted without change, Laws, 1997, ch. 496, § 57; reenacted without change, Laws, 2001, ch. 488, § 59, eff from and after July 1, 2001.

§ 81-12-119. Savings accounts; execution of contract by holder.

Each holder of a savings account shall execute a savings account contract setting forth any special terms and provisions applicable to such savings account and the ownership thereof and the conditions upon which withdrawals may be made, not inconsistent with the provisions of this chapter.

SOURCES: Laws, 1977, ch. 445, § 32(2); reenacted, Laws, 1982, ch. 301, § 60; Laws, 1990 Ex Sess, ch. 52, § 61; Laws, 1993, ch. 441, § 61; Laws, 1994, ch. 622, § 93; reenacted without change, Laws, 1997, ch. 496, § 58; reenacted without change, Laws, 2001, ch. 488, § 60, eff from and after July 1, 2001.

§ 81-12-121. Savings accounts; evidence of ownership.

Evidence of ownership of a savings account shall be issued in such form as approved by the commissioner by regulation.

SOURCES: Laws, 1977, ch. 445, § 32(3); reenacted, Laws, 1982, ch. 301, § 61; Laws, 1990 Ex Sess, ch. 52, § 62; Laws, 1993, ch. 441, § 62; Laws, 1994, ch. 622, § 94; reenacted without change, Laws, 1997, ch. 496, § 59; reenacted without change, Laws, 2001, ch. 488, § 61, eff from and after July 1, 2001.

§ 81-12-123. Savings accounts; lost or destroyed account books or certificates.

Upon the filing with an association by the holder of record as shown by the books of the association, or by his legal representative, of an affidavit to the effect that the account book or certificate evidencing his savings account with the association has been lost or destroyed, and that such account book or certificate has not been pledged or assigned in whole or in part, such association shall issue a new account book or certificate in the name of the holder of record, such evidence stating that it is issued in lieu of the one lost or destroyed, and the association shall in no way be liable thereafter on account of the original account book or certificate, provided that the board of directors shall, if in its judgment it is necessary, require a bond in an amount it deems sufficient to indemnify the association against any loss which might result from the issuance of such new account book or certificate.

SOURCES: Laws, 1977, ch. 445, § 32(4); reenacted, Laws, 1982, ch. 301, § 62; Laws, 1990 Ex Sess, ch. 52, § 63; Laws, 1993, ch. 441, § 63; Laws, 1994, ch. 622, § 95; reenacted without change, Laws, 1997, ch. 496, § 60; reenacted without change, Laws, 2001, ch. 488, § 62, eff from and after July 1, 2001.

§ 81-12-125. Savings accounts; inducements to open.

The commissioner shall by regulation determine the conditions under which merchandise, things of value or services performed outside the premises of an association may be furnished as an inducement for the opening or increase of any savings account.

SOURCES: Laws, 1977, ch. 445, § 32(5); reenacted, Laws, 1982, ch. 301, § 63; Laws, 1990 Ex Sess, ch. 52, § 64; Laws, 1993, ch. 441, § 64; reenacted and amended, Laws, 1994, ch. 622, § 96; reenacted without change, Laws, 1997, ch. 496, § 61; reenacted without change, Laws, 2001, ch. 488, § 63, eff from and after July 1, 2001.

§ 81-12-127. Savings accounts; adverse claims to accounts.

Notice to any association doing business in this state of an adverse claim to an account on its books in the name of any savings account holder shall not be effectual to cause the association to recognize such adverse claimant unless such adverse claimant either procures a restraining order, injunction or other appropriate process against the association from a court of competent jurisdiction in a cause therein instituted by him wherein the savings account holder in whose name the account appears is made a party and served with summons, or shall execute to the association, in form and with sureties acceptable to it, a bond indemnifying it from any and all liability, loss, damage, costs and expenses for and on the account of the payment of such adverse claim.

SOURCES: Laws, 1977, ch. 445, § 32(6); reenacted, Laws, 1982, ch. 301, § 64; Laws, 1990 Ex Sess, ch. 52, § 65; Laws, 1993, ch. 441, § 65; Laws, 1994, ch. 622, § 97; reenacted without change, Laws, 1997, ch. 496, § 62; reenacted without change, Laws, 2001, ch. 488, § 64, eff from and after July 1, 2001.

Cross References — Withdrawals from accounts, see § 81-12-151.

JUDICIAL DECISIONS

1. In general.

Since § 81-12-127 concerns the regulation of the savings association itself, and not the ownership of funds it holds, the statute could not be used as a lever to overturn the finding of the circuit court that the depositor owned the accounts which she had opened in names of various relatives. Carter v. State Mut. Fed. Sav. & Loan Ass'n, 498 So. 2d 324 (Miss. 1986).

RESEARCH REFERENCES

Am Jur. 13 Am. Jur. 2d, Building and Loan Associations §§ 5-7.

CJS. 12 C.J.S., Building and Loan Associations, Savings and Loan Associations, and Credit Unions §§ 35-46.

§ 81-12-129. Savings plans at educational institutions.

An association may contract with the proper authorities of any public or nonpublic elementary or secondary school or institution of higher learning, or any public or charitable institution caring for minors, for the participation and implementation by the association in any school or institutional thrift or savings plan, and it may accept savings accounts at such a school or institution, either by its own collector or by any representative of the school or institution which becomes the agent of the association for such purpose.

SOURCES: Laws, 1977, ch. 445, § 33(1); reenacted, Laws, 1982, ch. 301, § 65; Laws, 1990 Ex Sess, ch. 52, § 66; Laws, 1993, ch. 441, § 66; Laws, 1994, ch. 622, § 98; reenacted without change, Laws, 1997, ch. 496, § 63; reenacted without change, Laws, 2001, ch. 488, § 65, eff from and after July 1, 2001.

Cross References — Payment of earnings on savings accounts opened pursuant to this section, see § 81-12-149.

§ 81-12-131. Payroll savings plans.

An association may contract with any employer with respect to the solicitation, collection and receipt of savings by payroll deduction to be credited to a designated account or accounts of his or its employee or employees who voluntarily may participate.

SOURCES: Laws, 1977, ch. 445, § 33(2); reenacted, Laws, 1982, ch. 301, § 66; Laws, 1990 Ex Sess, ch. 52, § 67; Laws, 1993, ch. 441, § 67; Laws, 1994, ch. 622, § 99; reenacted without change, Laws, 1997, ch. 496, § 64; reenacted without change, Laws, 2001, ch. 488, § 66, eff from and after July 1, 2001.

Cross References — Payment of earnings on savings accounts opened pursuant to this section, see § 81-12-149.

§ 81-12-133. Attorneys authorized to make withdrawals; revocation of authority.

Any association may continue to recognize the authority of an attorney in fact authorized in writing to manage or to make withdrawals either in whole or in part from the savings account of a member or savings account holder until it receives written notice or is on actual notice of the revocation of his authority. For the purposes of this section, written notice of the death or adjudication of incompetency of such savings account holder shall constitute written notice of revocation of the authority of his attorney. No such institution shall be liable for damages, penalty or tax by reason of any payment made in accord with this section.

SOURCES: Laws, 1977, ch. 445, § 34; reenacted, Laws, 1982, ch. 301, § 67; Laws, 1990 Ex Sess, ch. 52, § 68; Laws, 1993, ch. 441, § 68; Laws, 1994, ch. 622, § 100; reenacted without change, Laws, 1997, ch. 496, § 65; reenacted without change, Laws, 2001, ch. 488, § 67, eff from and after July 1, 2001.

§ 81-12-135. Savings accounts issued to minors or persons under disability; payment of withdrawals; powers of parent or guardian; withdrawals on death of holder.

An association and any federal association may issue savings accounts to any minor or other person under disability as the sole and absolute owner of such savings account, and receive payments thereon by or for such owner, and pay withdrawals, accept pledges to the association, and act in any other manner with respect to such accounts on the written instruction of such savings account holder in accord with this chapter. Any payment or delivery of rights to any minor or other person under a disability, or a receipt or acquittance signed by a minor or other person under a disability, who holds a savings account, shall be a valid and sufficient release of such association for any payment so made or delivery of rights to such minor or person. The receipt, acquittance, pledge or other action required by the association to be taken by such minor or person shall be binding upon such minor or person with like effect as if he were of full age and legal capacity. The parent or guardian of such minor or person shall not in his capacity as parent or guardian have the power to attach or in any manner to transfer any savings account issued to or in the name of such minor or person; provided, however, that in the event of the death of such minor or person the receipt or acquittance of either parent, a person standing in loco parentis, guardian or conservator of such minor or person shall be a valid and sufficient discharge of such association for any sum or sums not exceeding in the aggregate One Thousand Dollars ($1,000.00) unless the minor or person shall have given written notice to the association not to accept the signature of such person.

SOURCES: Laws, 1977, ch. 445, § 35; Laws, 1982, chs. 301, § 68; 467, § 2; reenacted, Laws, 1990 Ex Sess, ch. 52, § 69; Laws, 1993, ch. 441, § 69; Laws, 1994, ch. 622, § 101; reenacted without change, Laws, 1997, ch. 496, § 66; reenacted without change, Laws, 2001, ch. 488, § 68, eff from and after July 1, 2001.

Cross References — Bank deposits by minors, see § 81-5-59.

Payment of indebtedness or delivery of personal property of decedent to decedent's successor, see § 91-7-322.

§ 81-12-137. Accounts in the name of two (2) or more persons.

(1) Accounts may be in the name of two (2) or more persons, whether minor or adult, in such form that the monies in the accounts are payable to either, or the survivor or survivors, and such money due under such accounts and all additions thereto shall be the property of such persons as joint tenants with the right of survivorship. The monies due under such accounts may be

paid to or on the order of any one (1) of such persons during his lifetime or to or on the order of any one (1) of the survivors of them after the death of any one or more of them. The opening of the account in such form shall be conclusive evidence as to the liability of the association only in any action or proceeding to which the association is a party, of the intention of all of the parties to the account to vest title to money due under the account and the additions thereto in such survivor or survivors. By written instructions given to the association by all the parties to the account, the signatures of more than one (1) of such persons during their lifetime or of more than one (1) of the survivors after the death of any one (1) of them may be required for withdrawal, in which case the association shall pay the monies in the account only in accordance with such instructions, but no such instructions shall limit the right of the survivor or survivors to receive the money in the account. By written agreement with the association, any person may create a joint account with other persons as joint tenants with the right of survivorship and said agreement may be signed only by the persons creating said account.

(2) The association, unless instructed in writing to the contrary, may loan money to any one or more persons constituting a single membership or account as joint tenants with the right of survivorship, and any person authorized to make withdrawals as provided in this section may pledge, hypothecate or assign all or any part of the money due or to become due under such account. Any such pledge, hypothecation or assignment or any increase to or withdrawal from the account shall not destroy the joint tenancy with right of survivorship.

(3) Payment of all or any of the monies in such account, as provided in this section, shall discharge the association from liability with respect to the monies so paid, prior to receipt by the association of a court order. After receipt of such court order, an association may refuse, without liability, to honor any withdrawal on the account pending determination of the rights of the parties. No association paying any survivor in accordance with the provisions of this section shall thereby be liable for any estate, inheritance or succession taxes which may be due this state.

SOURCES: Laws, 1977, ch. 445, § 36; reenacted, Laws, 1982, ch. 301, § 69; Laws, 1990 Ex Sess, ch. 52, § 70; Laws, 1993, ch. 441, § 70; Laws, 1994, ch. 622, § 102; reenacted without change, Laws, 1997, ch. 496, § 67; reenacted without change, Laws, 2001, ch. 488, § 69, eff from and after July 1, 2001.

Cross References — Bank deposits in the name of two or more persons, see § 81-5-63.

Payment of indebtedness or delivery of personal property of decedent to decedent's successor, see § 91-7-322.

JUDICIAL DECISIONS

1. In general.
2. Garnishment of joint account.

1. In general.

Section 81-5-63 and § 81-12-137, which deal, respectively, with joint deposits in a bank checking account and in a savings account in a savings association, create a presumption of joint tenancy ownership with the right of survivorship. On the other hand, such presumption does not apply to bank issued certificates of deposit held in the names of 2 or more persons, in the absence of express intent on the certificate to create such joint tenancy. Delta Fertilizer, Inc. v. Weaver, 547 So. 2d 800 (Miss. 1989).

2. Garnishment of joint account.

A joint account should be garnishable only in proportion to the debtor's ownership of the funds, as to which evidence is admissible to show what portion of the funds is actually owned by each depositor. Delta Fertilizer, Inc. v. Weaver, 547 So. 2d 800 (Miss. 1989).

RESEARCH REFERENCES

ALR. Liability of bank to joint depositor of savings account for amounts withdrawn by other joint depositor without presentation of passbook. 35 A.L.R.4th 1094.

Nondrawing cosignor's liability for joint checking account overdraft. 48 A.L.R.4th 1136.

§ 81-12-139. Accounts of administrators, executors, guardians, trustees, and other fiduciaries.

Any association may accept accounts in the name of any administrator, executor, guardian, trustee or other fiduciary in trust for a named beneficiary or beneficiaries. Any such fiduciary shall have power to vote as a member as if any membership account were held absolutely, to make payments upon, and to withdraw any such account, in whole or in part. The withdrawal value of any such account, or other rights relating thereto may be paid or delivered, in whole or in part, to such fiduciary, without regard to any notice to the contrary, as long as such fiduciary is living. The payment or delivery to any such fiduciary or a receipt of acquittance signed by any such fiduciary to whom any such payment or any such delivery of rights is made shall be valid and sufficient release and discharge of any association for the payment or delivery so made. Whenever a person holding an account in a fiduciary capacity dies and no written notice of the revocation or termination of t he trust relationship shall have been given to an association and the association has no notice of any other disposition of the trust estate, the withdrawal value of such account, or other rights relating thereto may, at the option of an association, be paid or delivered, in whole or in part, to the beneficiary or beneficiaries of such trust. Whenever an account shall be opened by any person describing himself in opening such account as trustee for another and there is no other or further notice of the existence and terms of a legal and valid trust, then such description shall be given in writing to such association. In the event of the death of the person so described as trustee, the withdrawal value of such account or any part thereof may be paid to the person for whom the account was thus stated to have been opened, and such account and all additions thereto shall be the property of such person, unless prior to payment the trust agreement is presented to the association showing a contrary interest. When made in accord with this section, the payment or delivery to any such beneficiary, beneficiaries or designated person, or a receipt or acquittance signed by any such beneficiary, beneficiaries or designated person for any such payment or delivery shall be valid and sufficient release and discharge of an association for the payment or delivery so made. Trust accounts permitted by this chapter shall not be required to be acknowledged and recorded. When an account is opened in a form described in this section, the right set forth in Section 81-12-145 shall apply. No association paying any beneficiary in accordance with the provisions of this section shall thereby be liable for any estate, inheritance or succession taxes which may be due this state.

SOURCES: Laws, 1977, ch. 445, § 37; reenacted, Laws, 1982, ch. 301, § 70; Laws, 1990 Ex Sess, ch. 52, § 71; Laws, 1993, ch. 441, § 71; Laws, 1994, ch. 622, § 103; reenacted without change, Laws, 1997, ch. 496, § 68; reenacted without change, Laws, 2001, ch. 488, § 70, eff from and after July 1, 2001.

Cross References — Powers of administrators generally, see § 91-7-47.

Investment by trustees, guardians, and other fiduciaries of funds held in trust, see §§ 91-13-1 et seq.

§ 81-12-141. Accounts of deceased nonresidents.

When an account is held in any association by a person residing in another state or country, the account, or any part thereof not in excess of Two Thousand Five Hundred Dollars ($2,500.00), may be paid to the administrator or executor appointed in the state or country where the account holder resides at the time of death, provided such administrator or executor has furnished the association with (a) authenticated copies of his letters and of the order of the court which issued the letters to him authorizing him to collect, receive and remove the personal estate, and (b) an affidavit by the administrator or executor that to his knowledge no letters are then outstanding in this state and no petition for letters by an heir, legatee, devisee or creditor of the decedent is pending on the estate in this state, and that there are no creditors of the estate in this state. Upon payment or delivery to such representative after receipt of the affidavit and authenticated copies, the association is released and discharged to the same extent as if the payment or delivery had been made to a legally qualified resident executor or administrator, and is not required to see to the application or disposition of the property. No action at law or in equity shall be maintained against the association for payment made in accordance with the above provisions.

SOURCES: Laws, 1977, ch. 445, § 38; Laws, 1980, ch. 426, § 2; reenacted, Laws, 1982, ch. 301, § 71; Laws, 1990 Ex Sess, ch. 52, § 72; Laws, 1993, ch. 441, § 72; Laws, 1994, ch. 622, § 104; enacted without change, Laws, 1997, ch. 496, § 69; reenacted without change, Laws, 2001, ch. 488, § 71, eff from and after July 1, 2001.

§ 81-12-143. Payments to successors without administration.

Any association may pay to the successor of a deceased depositor, as defined in Section 91-7-322(2), without necessity of administration, any sum to the credit of the deceased not exceeding Twelve Thousand Five Hundred Dollars ($12,500.00), upon affidavit that the deceased died leaving no last will and testament and bond signed by each of the successors guaranteeing payment of any lawful debts of the deceased to the extent of that withdrawal. The receipt of acquittance of the person or persons so paid shall be valid and sufficient release and discharge to the association as against all other persons and claimants for any payment so made; however, the bond shall be made available to any creditor for suit against the makers of the bond.

SOURCES: Laws, 1977, ch. 445, § 39; Laws, 1980, ch. 426, § 2; reenacted, 1982, ch. 301, § 72; Laws, 1990 Ex Sess, ch. 52, § 73; Laws, 1993, ch. 441, § 73; Laws, 1994, ch. 622, § 105; Laws, 1995, ch. 380, § 2; reenacted without change, Laws, 1997, ch. 496, § 70; reenacted without change, Laws, 2001, ch. 458, § 2; Laws, 2003, ch. 394, § 1, eff from and after July 1, 2003.

Joint Legislative Committee Note — Section 2 of ch. 458, Laws, 2001, effective from and after July 1, 2001 (approved March 23, 2001), amended this section. Section 72 of ch. 488, Laws, 2001, effective from and after July 1, 2001 (approved March 24, 2001), also amended this section. As set out above, this section reflects the language of Section 72 of ch. 488, Laws, 2001, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the legislative session, and the effective dates of the sections are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

§ 81-12-145. Accounts payable at death.

Accounts payable at death may be established under the following conditions:

(a) An account in an association may be opened by any person or persons with directions to make such an account payable on the death of the person or persons opening such an account to the named beneficiary or beneficiaries. When an account is so opened, the association shall pay any monies to the credit of the account from time to time to, or pursuant to the order of the person or persons opening such an account during his or their lifetime in the same manner as if the account were in the sole name or names of such person or persons.

(b) If the named beneficiary or one (1) of the beneficiaries so named survive the death of the person opening such an account and the beneficiary or all of the beneficiaries so named are sixteen (16) years of age or over at the death of the person opening such an account, the association shall pay the monies to the credit of the account, less all proper setoffs and charges, to the named beneficiary or beneficiaries or upon his or their order, as hereinafter provided, and such payment by the association shall be valid, notwithstanding any lack of legal age of the named beneficiary or beneficiaries; provided, however, where such an account is opened or subsequently held by more than one (1) person, the death of one (1) of such persons shall not terminate the account and the account shall continue as to the surviving person or persons and the named beneficiary or beneficiaries subject to the provisions of subsections (c) through (i) of this section.

(c) If the named beneficiary or all of the beneficiaries so named survive the death of the person or persons opening such an account and are under sixteen (16) years of age at such time, the association shall pay the monies to the credit of the account, less all proper setoffs and charges:

(i) When or after the named beneficiary becomes sixteen (16) years of age, to the named beneficiary or upon his order; or

(ii) When more than one (1) beneficiary is named, the association shall pay to each beneficiary so named his proportionate interest in such account as each severally becomes sixteen (16) years of age; or

(iii) To the legal guardian of the named beneficiary, wherever appointed and qualified, or where more than one (1) beneficiary is named, the association shall pay such beneficiary's proportionate interest in such account to his legal guardian wherever and whenever appointed and qualified; or

(iv) In the event no guardian is appointed and qualified, payment may be made in accordance with the provisions of Section 93-13-211 et seq., in situations to which such section or sections are applicable.

(d) Where the death of the person or persons opening such an account terminates the account under the provisions of subsections (b) and (c) of this section and where one or more of the named beneficiaries are under sixteen (16) years of age and the remainder of the named beneficiaries are sixteen (16) years of age or over, the association shall pay the monies to the credit of the trust, less all proper setoffs and charges, to:

(i) The named beneficiaries sixteen (16) years of age or over at the time of termination of said account pursuant to subsection (b) of this section, and

(ii) The named beneficiaries under sixteen (16) years of age at the time of termination of said account pursuant to subsection (c) of this section.

(e) Where such account is opened or subsequently held by more than one (1) person, the association, in the absence of any written instructions to the contrary, consented to by the association, shall accept payments made to such account and may pay any monies to the credit of such account from time to time to, or pursuant to the order of, either or any of said persons during their life or lives in the same manner as if the account were in the sole name of either or any of such persons.

(f) When a person or persons opens an account in an association, in the form set forth in subsection (a) of this section, and makes a payment or payments to such account, or causes a payment or payments to be made to such account, such person or persons shall be conclusively presumed to intend to vest in the named beneficiary or beneficiaries a present beneficial interest in such payment so made, and in the monies to the credit of the account from time to time, to the end that, if the named beneficiary or beneficiaries survive the person or persons opening such an account, all the right and title of the person or persons opening such an account in and to the monies to the credit of the account at the death of such person or persons, less all proper setoffs and charges, shall, at such death, vest solely and indefeasibly in the named beneficiary or beneficiaries subject to the conditions and limitations of subsections (c) through (i) of this section.

(g) If the named beneficiary predeceases the person opening such an account, the present beneficial interest presumed to be vested in the named beneficiary pursuant to subsection (f) of this section shall terminate at the death of the named beneficiary. In such case, the personal representatives of the named beneficiary, and all others claiming through or under the named beneficiary, shall have no right in or title to the monies to the credit of the account, and the association shall pay such monies, less all proper setoffs and charges, to the person opening such an account, or pursuant to his order, in the same manner as if the account were in the sole name of the person opening such an account; provided, however, where such an account names more than one (1) beneficiary, the death of one (1) of the beneficiaries so named shall not terminate the account and the account shall continue as to the surviving beneficiary or beneficiaries subject to the provisions of subsections (c) through (i) of this section.

(h) An association which makes any payment pursuant to subsections (c) through (g) of this section, prior to service upon the association or an order of court restraining such payment, shall, to the extent of each payment so made, be released from all claims of the person or persons opening such an account, the named beneficiary or beneficiaries, their legal representatives, and all others claiming through or under them.

(i) When an account is opened in a form described in subsection (a) of this section, the right of the named beneficiary or beneficiaries to be vested with sole and indefeasible title to the monies to the credit of the account on the death of the person or persons opening such an account shall not be denied, abridged or in anywise affected because such right has not been created by a writing executed in accordance with the law of this state prescribing the requirements to effect a valid testamentary disposition of property.

SOURCES: Laws, 1977, ch. 445, § 40; reenacted, Laws, 1982, ch. 301, § 73; Laws, 1990 Ex Sess, ch. 52, § 74; Laws, 1993, ch. 441, § 74; Laws, 1994, ch. 622, § 106; reenacted without change, Laws, 1997, ch. 496, § 71; reenacted without change, Laws, 2001, ch. 488, § 73, eff from and after July 1, 2001.

Cross References — Application of this section to fiduciary accounts, see § 81-12-139.

§ 81-12-147. Savings accounts as legal investments and as security for bonds.

(1) Administrators, executors, custodians, guardians, trustees, pension funds and other fiduciaries of every kind and nature, insurance companies, business and manufacturing companies, banks, credit unions and all other types of financial institutions, charitable, educational and eleemosynary institutions and organizations hereby are specifically authorized and empowered to invest funds held by them, without any order of any court, in savings accounts of associations which are under state supervision, and in accounts of insured associations, and such investments shall be deemed and held to be legal investments for such funds. With respect to investments by custodians, associations hereby are deemed to be qualified institutions within the meaning of that term as used in the Uniform Gifts to Minors Law of this state.

(2) The provisions of this section are supplemental to any and all other laws relating to and declaring what shall be legal investments for the persons, fiduciaries, corporations, organizations and officials referred to in this section, and the laws relating to the deposit of securities and the making and filing of bonds for any purpose.

SOURCES: Laws, 1977, ch. 445, § 41; reenacted, Laws, 1982, ch, 301, § 74; Laws, 1990 Ex Sess, ch. 52, § 75; Laws, 1993, ch. 441, § 75; Laws, 1994, ch. 622, § 107; reenacted without change, Laws, 1997, ch. 496, § 72; reenacted without change, Laws, 2001, ch. 488, § 74, eff from and after July 1, 2001.

§ 81-12-149. Payment of earnings on savings accounts.

An association may pay earnings on its savings accounts from sources available for payment of earnings at such rate and at such times and for such time or notice periods as shall be determined by resolution of its board of directors subject to such rules and regulations promulgated by the commissioner. Except for accounts which shall be classified according to a specified contractual time or notice period, earnings shall be declared on the withdrawal value of each savings account at the beginning of the accounting period, plus additions thereto made during the period (less amounts previously withdrawn and noticed for withdrawal, which for earnings purposes shall be deducted from the latest previous additions thereto) computed at the declared rate for the time the funds have been invested, which time shall be fixed by the bylaws of the association. No earnings shall be declared or paid for an accounting period unless the allocation to the general reserve for the pre ceding accounting period required herein has been made. The board of directors, by resolution, may determine that earnings shall not be paid on any savings account which has a withdrawal value of a specified amount less than Fifty Dollars ($50.00) or which by written agreement is intended to be closed within a specified period less than fifteen (15) months after the date on which such savings account is opened, provided that an exception may be made and earnings paid on savings accounts opened pursuant to Sections 81-12-129 and 81-12-131. The directors shall determine by resolution the method of calculating the amount of any earnings on savings accounts as herein provided, and the time or times when earnings are to be declared, paid or credited.

SOURCES: Laws, 1977, ch. 445, § 42; reenacted, Laws, 1982, ch 301, § 75; Laws, 1990 Ex Sess, ch. 52, § 76; Laws, 1993, ch. 441, § 76; reenacted and amended, Laws, 1994, ch. 622, § 108; reenacted without change, Laws, 1997, ch. 496, § 73; reenacted without change, Laws, 2001, ch. 488, § 75, eff from and after July 1, 2001.

Cross References — Reserve requirements, see § 81-12-113.

§ 81-12-151. Withdrawals by savings account holders.

Any savings account holder or other account holder or his authorized representative may at any time present a written application for withdrawal of all or any part of his savings account or other account. Every association shall pay, except as provided below, every withdrawal application in the amount stated thereon in the form of cash or one or more checks or similar instruments payable to the order of the account holder. However, if a federal savings and loan association located in this state acquires the right and power to pay withdrawal applications in the form of checks or similar instruments payable to the order of others than the account holder as directed, or by the transfer of credits to the account or accounts of others in an institution as directed, then an association incorporated pursuant to or operating under the provisions of this chapter may have and possess the same rights and powers if prescribed by the board pursuant to subsection (r) of Section 8 1-12-49. No withdrawal shall be made in excess of the withdrawal value of such savings account or accounts, together with any earnings which may have been declared and may have accrued thereon for the current period. The payment of withdrawals from savings accounts shall be subject to the right of the association to require notice not to exceed thirty (30) days and shall be subject to such rules and procedures as may be prescribed by regulations of the commissioner, but any association which, except as authorized in writing by the commissioner, fails to make full payment of any withdrawal when due shall be deemed to be in an impaired condition to transact business within the meaning of Section 81-12-183 of this chapter.

SOURCES: Laws, 1977, ch. 445, § 43;1980, ch. 449, § 61; reenacted, Laws, 1982, ch. 301, § 76; Laws, 1990 Ex Sess, ch. 52, § 77; Laws, 1993, ch. 441, § 77; reenacted and amended, Laws, 1994, ch. 622, § 109; reenacted without change, Laws, 1997, ch. 496, § 74; reenacted without change, Laws, 2001, ch. 488, § 76, eff from and after July 1, 2001.

§ 81-12-153. Redemptions.

At any time funds are on hand for the purpose, the association shall have the right to redeem by lot as the board of directors may determine, all or any part of any of its savings accounts on an earnings date by giving thirty (30) days' notice by registered mail addressed to each affected account holder at his last address as recorded on the books of the association. No association shall redeem any of its savings accounts when the association is in an impaired condition or when it is unable to pay its applications for withdrawal. The redemption price of savings accounts redeemed shall be the full value of the account redeemed, as determined by the board of directors, but in no event shall the redemption price be less than the withdrawal value. If the aforesaid notice of redemption shall have been duly given, and if on or before the redemption date the funds necessary for such redemption shall have been set aside so as to be and continue to be available therefor, earnings upon the accounts called for redemption shall cease to accrue from and after the earnings date specified as the redemption date; and all rights with respect to such accounts shall forthwith, after such redemption date, terminate, except only for the right of the account holder of record to receive the redemption price with interest to the redemption date. All savings account books or certificates evidencing former savings accounts which have been validly called for redemption must be tendered for payment within ten (10) years from the date of redemption designated in the redemption notice, otherwise they shall be cancelled. After the expiration of the period of ten (10) years, the association in which the funds are located shall, within six (6) months, pay the funds to the commissioner, who shall deposit such funds to the department's account with the State Treasurer.

SOURCES: Laws, 1977, ch. 44; reenacted, Laws, 1982, ch. 301, § 77; Laws, 1990 Ex Sess, ch. 52, § 78; Laws, 1993, ch. 441, § 78; reenacted and amended, Laws, 1994, ch. 622, § 110; reenacted without change, Laws, 1997, ch. 496, § 75; reenacted without change, Laws, 2001, ch. 488, § 77, eff from and after July 1, 2001.

Cross References — Effect of exercise of the right of redemption on the right of a director to remain in office, see § 81-12-81.

This section constituting exception to general prohibition against preferring one savings account over another in earnings participation, see § 81-12-115.

§ 81-12-155. Securities in which associations may invest.

Associations shall have power to invest in securities as follows:

(a) Without limit, in obligations of, or obligations which are fully guaranteed as to principal and interest by, the United States or this state; in stock or obligations of any federal home loan bank or banks; in stock or obligations of the Federal Deposit Insurance Corporation; in stock or obligations of the Federal National Mortgage Association, the Government National Mortgage Association, Federal Home Loan Mortgage Corporation, or any successor or successors thereto; in demand, time, or savings deposits, accounts or other obligations of any financial institution the accounts of which are insured by a federal agency; in bankers' acceptances which are eligible for purchase by Federal Reserve banks;

(b) Not in excess of twenty-five percent (25%) of its assets in (i) bonds, notes or other evidences of indebtedness which are a general obligation of, or guaranteed as to principal and interest by, any agency or instrumentality of the United States not specified in subsection (a) or of this state, or any city, town, village, county, district or other municipal corporation or political subdivision of this state, or any public instrumentality or public authority of any one or more of the foregoing; (ii) capital stock, obligations, or other securities of service organizations, provided that the commissioner shall establish by regulation the permissible aggregate of such investments as a percentage of assets; and (iii) other stocks, securities and obligations which the board shall approve and place on a list to be published and distributed to every association from time to time, and the commissioner is directed to publish and make distribution of such a list. An association holding investments which are so listed by the commissioner shall have a reasonable time to dispose of the same if at a later time the commissioner shall remove such investments from the list.

SOURCES: Laws, 1977, ch. 445, § 45; reenacted, Laws, 1982, ch. 301, § 78; Laws, 1990 Ex Sess, ch. 52, § 79; Laws, 1993, ch. 441, § 79; reenacted and amended, Laws, 1994, ch. 622, § 111; reenacted without change, Laws, 1997, ch. 496, § 76; reenacted without change, Laws, 2001, ch. 488, § 78, eff from and after July 1, 2001.

Cross References — Notes issued by municipalities to finance industrial enterprise projects as legal investments for savings and loan associations, see § 57-41-11.

Limitations on investments or granting loans, see § 81-12-157.

Loans and other investments in which associations may invest, see § 81-12-159.

§ 81-12-157. Association may not invest in security or grant loan when liquid assets are less than five percent of savings liability.

No association shall invest in any security, other than those that qualify as liquid assets, or in any loan at any time when its liquid assets are less than five percent (5%) of its savings liability unless the commissioner shall after investigation have issued written approval.

SOURCES: Laws, 1977, ch. 445, § 46; reenacted, Laws, 1982, ch. 301, § 79; Laws, 1990 Ex Sess, ch. 52, § 80; Laws, 1993, ch. 441, § 80; Laws, 1994, ch. 622, § 112; reenacted without change, Laws, 1997, ch. 496, § 77; reenacted without change, Laws, 2001, ch. 488, § 79, eff from and after July 1, 2001.

Cross References — Securities in which associations may invest, see § 81-12-155.

Loans and other investments in which associations may invest, see § 81-12-159.

§ 81-12-159. Loans and other investments in which associations may invest.

Every association shall have power to invest in loans and other investments as follows:

(a) Loans secured by its savings accounts to the extent of the withdrawal value thereof;

(b) Real estate loans in any amount not exceeding the value of the security, subject to the following conditions:

(i) No association shall make a real estate loan to one (1) borrower if the sum of (1) the amount of such loan, and (2) the total balances of all outstanding loans owed to such association by such borrower, excluding the amount of any loan on the security of a savings account, exceeds an amount equal to ten percent (10%) of such association's savings liability or an amount equal to the sum of such association's net worth except that any such loan may be made if the sum of (1) and (2) does not exceed One Hundred Thousand Dollars ($100,000.00);

(ii) An association may (1) participate with one or more financial institutions, or entities having a tax exemption under Section 501(a) of the Internal Revenue Code, in any real estate loan of the type in which such association is authorized to invest on its own account, provided that the participating interest of such association is not subordinated or inferior to any other participating interest; or (2) participate in such real estate loans with other than financial institutions or those entities described, provided that the participating interest of such association is superior to the participating interests of such other participants;

(iii) Such restrictions on real estate loans on real estate located outside the primary lending area of an association and on real estate loans as the commissioner may establish by regulation;

(iv) Such other restrictions as the commissioner may establish;

(c) Loans secured by the pledge of loans or investments, the assignment of which need not be recorded, of a type in which the association is authorized to invest, provided that the loans and investments so pledged shall be subject to all restrictions and requirements which would be applicable were the association to invest directly in such loans or investments;

(d) Loans secured by the pledge of policies of life insurance, the assignment of which is properly acknowledged by the insured, but not exceeding the cash value of such policies;

(e) Property improvement loans made pursuant to the provisions of any title of the National Housing Act or subject to any limitation as to maximum loan amount prescribed by the commissioner for all associations, loans to homeowners and other property owners for the construction, maintenance, repair, alteration, modernization, landscaping, improvement, furnishing or equipping of properties pursuant to rules and regulations prescribed by the commissioner;

(f) Loans made for the purpose of mobile home financing, subject to any limitation as to maximum loan amount which may be prescribed by the commissioner for all associations. For the purpose of this subsection, "mobile home" shall mean a movable accommodation used or designed for use as living quarters;

(g) Such real property or interests therein, including real estate for home or branch offices, as the directors may deem necessary or convenient for the conduct of the business of the association, which for the purposes of this chapter shall be deemed to include the ownership of stock of a wholly owned subsidiary corporation having as its exclusive activity the ownership and management of such property or interests, but the amount so invested shall not exceed the net worth of the association, provided that the commissioner may authorize a greater amount to be so invested.

SOURCES: Laws, 1977, ch. 445, § 47; Laws, 1982, chs. 301, § 80; 467, § 3; Laws, 1990 Ex Sess, ch. 52, § 81; Laws, 1993, ch. 441, § 81; reenacted and amended, Laws, 1994, ch. 622, § 113; reenacted without change, Laws, 1997, ch. 496, § 78; reenacted without change, Laws, 2001, ch. 488, § 80, eff from and after July 1, 2001.

Cross References — Investments in county industrial development authority bonds, see § 57-31-27.

Securities in which associations may invest, see § 81-12-155.

Limitations on investments or granting loans, see § 81-12-157.

RESEARCH REFERENCES

ALR. "Redlining," consisting of denial of home loans or insurance coverage in certain neighborhoods, as discrimination in violation of §§ 804 and 805 of Fair Housing Act (42 USCS §§ 3604, 3605). 73 A.L.R. Fed. 899.

Am Jur. 13 Am. Jur. 2d, Building and Loan Associations §§ 565 et seq., 581, 641, 999.

4 Am. Jur. Legal Forms 2d, Building and Savings and Loan Associations §§ 48:110.1, 48:115 et seq., 48:136, 48:137.

CJS. 12A C.J.S., Building and Loan Associations, Savings and Loan Associations, and Credit Unions §§ 81 et seq.

§ 81-12-161. Real estate loans to be written on approved loan plans.

Real estate loans eligible for investment by an association under this chapter shall be written upon loan plans approved by the commissioner, which shall include provisions for appraisals, payments, evidences of the loans, and security instruments, and may include provisions concerning liens, payments of taxes and insurance premiums and similar charges, and advance payments of taxes and insurance premiums and similar charges.

SOURCES: Laws, 1977, ch. 445, § 48; reenacted, Laws, 1982, ch. 301, § 81; Laws, 1990 Ex Sess, ch. 52, § 82; Laws, 1993, ch. 441, § 82; reenacted and amended, 1994, ch. 622, § 114; reenacted without change, Laws, 1997, ch. 496, § 79; reenacted without change, Laws, 2001, ch. 488, § 81, eff from and after July 1, 2001.

§ 81-12-163. Borrower's right to select attorney and obtain insurance in connection with loan; rules and regulations governing fire, casualty and title insurance.

In connection with a loan, the borrower may be required to pay an attorney of his choice for services performed in connection with the loan; the borrower shall not be required to pay any attorney's fee to any attorney not selected by the borrower; and the borrower shall have the right to obtain at his own expense, if such insurance would be required by the lender, fire and casualty insurance on the property offered as security, or credit life insurance, from an insurance agent of the borrower's choice. The commissioner is empowered to promulgate rules and regulations governing the filing and maintenance by the borrower with the association of fire and casualty insurance on the property offered as security, and title insurance. But the commissioner shall not authorize title insurance in any company that is not authorized to do business in the State of Mississippi.

SOURCES: Laws, 1977, ch. 445, § 49(1); reenacted, Laws, 1982, ch. 301, § 82; Laws, 1990 Ex Sess, ch. 52, § 83; Laws, 1993, ch. 441, § 83; reenacted and amended, Laws, 1994, ch. 622, § 115; reenacted without change, Laws, 1997, ch. 496, § 80; reenacted without change, Laws, 2001, ch. 488, § 82, eff from and after July 1, 2001.

§ 81-12-165. Payment of expenses in connection with closing of loan; borrower to pay only his own attorney's fee; notice of right to select attorney; right of association to require title insurance.

Every association may require borrowers to pay all reasonable expenses incurred in connection with the making, closing, disbursing, extending, readjusting or renewing of real estate loans as shall be authorized by the commissioner. If an attorney's fee is charged the borrower in connection with any loan, the borrower shall have the right to select an attorney of his choice to close the loan and to look after his interests in connection with the loan and the fee shall be paid to the attorney selected. It is the intention of the Legislature to insure that the borrower shall not be required to pay any attorney's fee to any attorney other than the attorney selected by the borrower to close the loan. The borrower shall be advised by the association in writing of his right to select an attorney, provided that such attorney is on an approved list of a title insurance company acceptable to the association, and authorized to do business in the State of Mississippi. Title insurance is used herein as a criterion for qualifications of attorneys only, and nothing in this chapter shall be construed as requiring any association to require a borrower to secure a title insurance policy in addition to the regular attorney's certification of title. However, an association may, if it desires, require title insurance policies on loans, but if policies are required from one (1) attorney they shall be required from all attorneys used in connection with loans under this section. No association shall discriminate as to any charges, fees or discounts, or make any different charges whatsoever between loans closed by an attorney selected or recommended by, or representing the association and loans closed by an attorney selected by the borrower under the provisions of this subsection. It is the intent of the Legislature that borrowers shall be free to select attorneys of their choice to close all loans under the authority of this paragraph, without incurring any additional charge or expense whatsoever. The commissioner shall have the authority to adopt reasonable rules and regulations to promulgate the provisions of this subsection. Any association, or any officer or employee of any such association willfully violating the provisions of this subsection shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than One Hundred Dollars ($100.00) nor more than Five Hundred Dollars ($500.00).

SOURCES: Laws, 1977, ch. 445, § 49(2); reenacted, Laws, 1982, ch. 301, § 83; Laws, 1990 Ex Sess, ch. 52, § 84; Laws, 1993, ch. 441, § 84; reenacted and amended, Laws, 1994, ch. 622, § 116; reenacted without change, Laws, 1997, ch. 496, § 81; reenacted without change, Laws, 2001, ch. 488, § 83, eff from and after July 1, 2001.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 81-12-167. Late payment charges.

A late payment charge, not exceeding Five Dollars ($5.00) or four percent (4%) of the amount of any delinquency, whichever is greater, if contracted for, shall not be considered interest under the usury laws. However, no such charge shall be made unless such delinquency is more than fifteen (15) days past due.

SOURCES: Laws, 1977, ch. 445, § 49(3); Laws, 1981, ch. 336, § 1; reenacted and amended, Laws, 1982, ch. 301, § 84; reenacted, 1990 Ex Sess, ch. 52, § 85; Laws, 1993, ch. 441, § 85; Laws, 1994, ch. 622, § 117; Laws, 1996, ch. 400, § 24; reenacted without change, Laws, 1997, ch. 496, § 82; reenacted without change, Laws, 2001, ch. 488, § 84, eff from and after July 1, 2001.

RESEARCH REFERENCES

Am Jur. 13 Am. Jur. 2d, Building and Loan Associations § 1003.

CJS. 12A C.J.S., Building and Loan Associations, Savings and Loan Associations, and Credit Unions § 108.

§ 81-12-169. Reinstatement of loan prior to foreclosure sale.

The directors of an association may, at any time before an actual sale of property on a foreclosure proceeding previously instituted by the association, reinstate a loan and any savings account securing the same. The effect of such reinstatement shall be to place the association, the borrower, and any other interested person in the same legal position as if no action had been taken, looking to such foreclosure.

SOURCES: Laws, 1977, ch. 445, § 50; reenacted, Laws, 1982, ch. 301, § 85; Laws, 1990 Ex Sess, ch. 52, § 86; Laws, 1993, ch. 441, § 86; Laws, 1994, ch. 622, § 118; reenacted without change, Laws, 1997, ch. 496, § 83; reenacted without change, Laws, 2001, ch. 488, § 85, eff from and after July 1, 2001.

Cross References — Sale of lands under mortgages and deeds of trust, see §§ 89-1-55 et seq.

§ 81-12-171. Right of association to deal with successor in interest of real estate securing loan.

In the case of any investment made by an association in a real estate loan where the ownership of the real estate security or any part thereof later becomes vested in a person other than the party or parties originally executing the security instruments, unless there is an agreement in writing to the contrary, an association may, without notice to such party or parties, deal with such successor or successors in interest with reference to said mortgage and the debt thereby secured in the same manner as with such party or parties, and may forbear to sue or may extend time for payment of or otherwise modify the terms of the debt secured thereby, without discharging or in any way affecting the liability of such original party or parties thereunder or upon the debt thereby secured.

SOURCES: Laws, 1977, ch. 445, § 51; reenacted, Laws, 1982, ch. 301, § 86; Laws, 1990 Ex Sess, ch. 52, § 87; Laws, 1993, ch. 441, § 87; Laws, 1994, ch. 622, § 119; reenacted without change, Laws, 1997, ch. 496, § 84; reenacted without change, Laws, 2001, ch. 488, § 86, eff from and after July 1, 2001.

JUDICIAL DECISIONS

1. In general.

State savings associations are engaged in banking business and are "state banks" within meaning of National Banking Act, 12 USCS § 36, such that national banks within state may open branch offices to same extent as state saving associations. Department of Banking & Consumer Fin. v. Clarke, 809 F.2d 266 (5th Cir. 1987), cert. denied, 483 U.S. 1010, 107 S. Ct. 3240, 97 L. Ed. 2d 745 (1987).

§ 81-12-173. Right to act to avoid loss.

An association, with the approval of the commissioner, may operate a business, manage or deal in property, or take any other action over whatever period of time may reasonably be necessary to avoid loss on a loan or investment theretofore made or an obligation created in good faith.

SOURCES: Laws, 1977, ch. 445, § 52; reenacted, Laws, 1982, ch. 301, § 87; Laws, 1990 Ex Sess, ch. 52, § 88; Laws, 1993, ch. 441, § 88; Laws, 1994, ch. 622, § 120; reenacted without change, Laws, 1997, ch. 496, § 85; reenacted without change, Laws, 2001, ch. 488, § 87, eff from and after July 1, 2001.

§ 81-12-175. Branch offices.

(1) A branch office is a legally established place of business of the association other than the home office, authorized by the board of directors and approved as provided herein, at which savings accounts and loan payments may be accepted and applications for loans may be received, and at which account books and certificates may be issued and loans may be closed by employees of the association.

(2) Each association shall be operated from the home office. All branch offices shall be subject to direction from the home office.

(3) No association may establish or operate a branch office without authorization of the commissioner. Each application for approval of the establishment and operation of a branch office shall state the proposed location thereof, the need therefor, the functions to be performed therein, the estimated volume of business thereof, the estimated annual expense thereof and the mode of payment therefor, and shall be accompanied by a budget of the association for the current earnings period and for the next succeeding semiannual period, which reflects the estimated additional expense of the maintenance of such a branch office. A resolution adopted by the board of directors of the association authorizing the proposed branch office and specifying the location and manner in which the branch office will be financed shall be submitted with each application. The commissioner may, by regulation, require the application to state other relevant and necessary information. Applications shall be made to the commissioner; and, upon receipt, he shall make an investigation to determine whether the establishment and maintenance of such office will unduly injure any properly conducted existing association or federal association in the community where such branch office is proposed to be established. The provisions of Section 81-12-29 of this chapter shall be followed in processing such application, except that the hearing shall be before the commissioner instead of the board.

(4) No association may change the location of a branch office to a municipality other than that in which it is located without authorization of the commissioner. Each application for approval of change of location of a branch office to another municipality shall state the proposed location thereof, the need therefor, the functions to be performed therein, the estimated volume of business thereof, the estimated annual expense thereof, and the mode of payment therefor, and shall be accompanied by a budget of the association for the current earnings period and for the next succeeding semiannual period, which reflects the estimated additional expense of the maintenance of such proposed change of location of the branch office. A resolution adopted by the board of directors of the association authorizing the proposed change of location of the branch office to another municipality and specifying the location and proposed manner in which such branch office will be financed shall be submitted with each application. The commissioner may, by regulation, require the application to state other relevant and necessary information. Applications shall be made to the commissioner; and, upon receipt, he shall

make an investigation to determine whether the establishment and maintenance of such office will unduly injure any properly conducted existing association or federal association in the community to which the location of such branch office is proposed to be changed. The provisions of Section 81-12-29 shall be followed in processing such applications, except that the hearing shall be before the commissioner instead of the board.

(5) No association may change the location of a branch office to another location in the same municipality without authorization by the commissioner. The commissioner shall prescribe the form of the application, prerequisites and requirements. Notice of such proposed change of location shall be given as provided in Section 81-12-29(1). If no protests are filed after such notice, the commissioner may approve such application if it meets the established prerequisites and requirements. If protests are filed, the commissioner, upon reasonable notice to the applying association and its attorney and to the protestants and their attorneys, shall hold a hearing and, based upon his written findings at such hearing, issue a certificate of approval or disapproval.

(6) No branch office in this state may be discontinued or abandoned without the consent in writing of the commissioner first obtained.

SOURCES: Laws, 1977, ch. 445, § 53; Laws, 1982, chs. 301, § 88; Laws, 1982, 331, § 5; reenacted, Laws, 1990 Ex Sess, ch. 52, § 89; Laws, 1993, ch. 441, § 89; reenacted and amended, Laws, 1994, ch. 622, § 121; Laws, 1996, ch. 400, § 25; reenacted without change, Laws, 1997, ch. 496, § 86; reenacted without change, Laws, 2001, ch. 488, § 88, eff from and after July 1, 2001.

Cross References — Establishment of branch banks, see §§ 81-7-1 et seq.

Establishment of a savings branch office, loan branch office or a loan processing office by an association, see § 81-12-176.

§ 81-12-176. Branch offices; additional types of offices.

No association shall, without authorization by the commissioner, establish a savings branch office, loan branch office or a loan processing office. The commissioner shall prescribe the form of the application, prerequisites and requirements for the above types of offices. If no protest is filed after notice has been given as provided in Section 81-12-29(1), the commissioner may approve the application for the above-described limited service branch offices if the established prerequisites and requirements are met. If protests are filed, the commissioner, upon reasonable notice to the applying association and its attorney and to the protestants and their attorneys, shall hold a hearing and, based upon his written findings at such hearing, issue a certificate of approval or disapproval.

SOURCES: Laws, 1982, ch. 331, § 7; reenacted, Laws, 1990 Ex Sess, ch. 52, § 90; Laws, 1993, ch. 441, § 90; Laws, 1994, ch. 622, § 122; reenacted without change, Laws, 1997, ch. 496, § 87; reenacted without change, Laws, 2001, ch. 488, § 89, eff from and after July 1, 2001.

Cross References — Establishment of branch banks generally, see §§ 81-7-1 et seq.

§ 81-12-177. Annual report; annual audit; additional reports and examinations; access to books and papers.

(1) On or before the forty-fifth day after the end of an association's annual accounting period, every association shall make an annual written report to the commissioner, upon a form to be prescribed and/or furnished by the commissioner, of its affairs and operations, which shall include a complete statement of its financial condition, including a statement of income and expense since its last previous similar report, for the twelve (12) months ending on the last day of its accounting period of the previous year. This report shall include a statement of full compliance with this chapter, and such other information as the commissioner shall direct. Every such report shall be verified by the president, managing officer or any other officer designated by the commissioner.

(2) Every association also shall make such other reports as the commissioner may from time to time require, which shall be in such form and filed on such date as he may prescribe and shall be verified in the same manner as the annual report.

(3) The commissioner shall require that every association have its affairs examined and be audited at least once a year. The commissioner shall review such examination and audit within a reasonable time after their completion.

(4) The commissioner shall accept any examination made or any audit caused to be made by a federal home loan bank, the appropriate federal regulatory authority, or by the Federal Deposit Insurance Corporation.

(5) The commissioner may, without previous notice, examine or cause an examination to be made into the affairs of an association.

(6) Whenever, in the judgment of the commissioner, the condition of any association renders it necessary or expedient to make any extra examination or audit or to devote any extraordinary attention to its affairs, the commissioner shall cause the same to be done. A full and complete copy of the report of all examinations and audits shall be furnished to the association examined. Such report of examination or audit shall be presented by the president to the board of directors at its next regular or special meeting.

(7) The commissioner is authorized in connection with any examination or audit of any association to cause to be made appraisals of real estate held by the association or securing the association's assets when specific facts or information with respect to real estate held, secured loans or lending, or when in his opinion the association's policies, practices, operating results and trends give evidence that an association's appraisals may be excessive, that lending or investment may be of a marginal nature, that appraisal policies and practices may not conform with generally accepted and established professional standards, or that real estate held by the association or assets secured by real estate are overvalued. In lieu of causing such appraisals to be made, the commissioner may accept any appraisal caused to be made by a federal home loan bank, the appropriate federal regulatory authority, or by the Federal Deposit Insurance Corporation. Unless otherwise ordered by the commis-

sioner, appraisal of real estate in connection with any examination or audit pursuant to this section shall be made by a professional appraiser or appraisers selected by the commissioner, and the cost of such appraisal promptly shall be paid by such association directly to such appraiser or appraisers, upon receipt by the association of a statement of such cost bearing the written approval of the commissioner. A copy of the report of such appraisal caused to be made by the commissioner, pursuant to this subsection, shall be furnished to the association within a reasonable time, not to exceed sixty (60) days following the completion of such appraisals, and may be furnished to the insuring agency.

(8) The commissioner or his examiners or auditors shall have free access to all books and papers of an association, a holding company of an association, or a service organization, the principal office of which is located in this state and which is principally owned by one or more thrift institutions, which relate to its business and books and papers kept by any officer, agent or employee, relating to or upon which any record of its business is kept, and may summon witnesses and administer oaths or affirmations in the examination of the directors, officers, agents or employees of any such association, service organization or any other person in relation to its affairs, transactions and conditions, and may require and compel the production of records, books, papers, contracts or other documents by court order, if not voluntarily produced.

SOURCES: Laws, 1977, ch. 445, § 54; Laws, 1982, chs. 301, § 89; 331, § 6; reenacted, Laws, 1990 Ex Sess, ch. 52, § 91; Laws, 1993, ch. 441, § 91; reenacted and amended, Laws, 1994, ch. 622, § 123; Laws, 1996, ch. 400, § 26; reenacted without change, Laws, 1997, ch. 496, § 88; reenacted without change, Laws, 2001, ch. 488, § 90, eff from and after July 1, 2001.

Cross References — Power of the commissioner to order correction of improper entries on books and records of an association, see § 81-12-23.

Charging off overvalued assets from association's books, see § 81-12-103.

Commissioner requiring reappraisal of real estate securing loans which are delinquent more than 4 months, see § 81-12-105.

§ 81-12-178. Public availability of federal evaluations of banks.

(1) The commissioner shall obtain each year from the appropriate federal financial supervisory agency or agencies the public sections of the written evaluations prepared pursuant to 12 USCS Section 2906 of the Community Reinvestment Act, as amended (12 USCS Section 2901 et seq.), of each state savings association, savings bank, and savings and loan association and each federal savings and loan association located in Mississippi, and each savings and loan holding company that controls any savings association, savings bank or savings and loan association located in Mississippi. Once each year, the commissioner shall publish in some newspaper having a general circulation in the state a statement that the public section of the written evaluation prepared

pursuant to 12 USCS Section 2906 of the Community Reinvestment Act, as amended (12 USCS Section 2901 et seq.), of each such savings association, savings bank, savings and loan association and savings and loan holding company is maintained in the office of the commissioner and will be made available for inspection to any person upon request during business hours, and that copies of all or part of any evaluation will be furnished to any person upon request for a reasonable copying fee prescribed by the commissioner.

(2) For the purposes of this section, the term "appropriate federal financial supervisory agency" shall have the same meaning as the definition in 12 USCS Section 2902.

SOURCES: Laws, 1993, ch. 441, § 92; reenacted, Laws, 1994, ch. 622, § 124; reenacted without change, Laws, 1997, ch. 496, § 89; reenacted without change, Laws, 2001, ch. 488, § 91, eff from and after July 1, 2001.

Federal Aspects — Community Reinvestment Act, see 12 USCS § 2901 et seq.

§ 81-12-179. Order of discontinuance of violation; enforcement in chancery court.

If the commissioner, as a result of any examination or from any report made to him, shall find that any association is violating the provisions of its certificate of incorporation or bylaws, or the laws of this state or of the United States, or any lawful order or regulation of the commissioner, he shall, by a formal written order delivered to the association as aforesaid, state any alleged violation, together with a statement of the facts alleged to be such violation, and order discontinuance of such violation and conformance with all requirements of law. Such order shall specify the effective date thereof, which may be immediate or may be at a later date, and such order shall remain in effect until withdrawn by the commissioner or until terminated by a court order. Such order of the commissioner, upon application made on or after the effective date thereof by the commissioner to the chancery court in the county in which the home office of the association is located, shall be enforced ex parte and without notice by an order to comply entered by the court. Such proceedings shall be given precedence over all cases pending in such court, and shall in every way be expedited. Any association affected by such order of the commissioner shall, after receipt thereof, have the right to apply within thirty (30) days to any such court for an immediate hearing and order suspending the order of the commissioner upon such conditions as may be prescribed by the court until such time as the hearing has been completed. The hearing of such application to the court shall be upon such notice to the commissioner as the court shall provide. Whether upon application by the commissioner or by the association, such court shall have power to and shall adjudicate the question and enter the proper order or orders and enforce the same.

SOURCES: Laws, 1977, ch. 445, § 55(1); reenacted, Laws, 1982, ch. 301, § 90; Laws, 1990 Ex Sess, ch. 52, § 92; Laws, 1993, ch. 441, § 93; reenacted and amended, Laws, 1994, ch. 622, § 125; reenacted without change, Laws,

1997, ch. 496, § 90; reenacted without change, Laws, 2001, ch. 488, § 92, eff from and after July 1, 2001.

Cross References — Power of the commissioner to require associations and corporations to correct violations, see § 81-12-23.

§ 81-12-181. Appointment of conservator; powers and privileges; directors, officers and employees to remain; effect on deposits, withdrawals and loans.

(1) If the commissioner, as a result of any examination or from any report made to him, believes that the public interest may be served by the appointment of a conservator, and if he shall find that: (a) the capital of an association is impaired, or (b) the association is concealing any assets, books or records, or (c) the members of such association are in actual danger of loss due to mismanagement, misappropriation of funds, fraud, violation of this chapter, or violation of any lawful rule of the commissioner, or (d) any association is in violation of an order or injunction, as authorized by this section, which has become final in that time to appeal has expired without appeal or a final order entered from which there can be no appeal, the commissioner may appoint a conservator for such association, which may be the commissioner or any other person, and upon such appointment shall apply immediately to the chancery court in the county in which the home office of t he association is located for confirmation of such appointment, and such court shall have exclusive jurisdiction to determine the issues and all related matters. Such proceedings shall be given precedence over other cases pending in such court, and shall in every way be expedited. Such court shall confirm such appointment if it shall find that one or more of such grounds exist, and a certified copy of the order of the court confirming such appointment shall be evidence thereof. Such conservator shall have the power and authority provided in this chapter and such other power and authority as may be expressed in the order of the court. Such conservator shall endeavor promptly to remedy the situations complained of by the commissioner in his application for confirmation of such appointment. Within six (6) months of the date of such appointment, or within twelve (12) months if the court shall extend such period of six (6) months, such association shall be returned to the board of directors thereof and thereafter shall be managed and operated as if no conservator had been appointed, or a receiver shall be appointed as hereinafter provided. If the commissioner or examiner is appointed conservator, he shall receive no additional compensation, but if another person is appointed, then the compensation of the conservator, as determined by the court, shall be paid by the association. A certified copy of the order of the court discharging such conservator and returning such association to the directors thereof shall be sufficient evidence thereof.

(2) Any conservator appointed shall have all the rights, powers and privileges possessed by the officers, board of directors and members of the association and shall have the power, with the approval of the court, to limit or condition withdrawals from the association and to effectuate a system for payment of withdrawals.

(3) The directors and officers shall remain in office and the employees shall remain in their respective positions, but the conservator may remove any director, officer or employee, provided the order of removal of a director or officer shall be approved in writing by the commissioner.

(4) While the association is in the charge of a conservator, members or borrowers of such association shall continue to make payments to the association in accordance with the terms and conditions of their contracts, and the conservator, in his discretion, may permit savings account members or savings account holders to withdraw their accounts from the association pursuant to the provisions of this chapter. The conservator shall have power to accept savings accounts and additions to savings accounts, but any such amounts received by the conservator may be segregated if the commissioner shall so order in writing; if so ordered, such amounts shall not be subject to offset and shall not be used to liquidate any indebtedness of such association existing at the time the conservator was appointed for it or any subsequent indebtedness incurred for the purposes of liquidating the indebtedness of any such association existing at the time such conservator was appointed. All expenses of the association during such conservatorship shall be paid by the association.

SOURCES: Laws, 1977, ch. 445, § 55(2-5); reenacted, Laws, 1982, ch. 301, § 91; Laws, 1990 Ex Sess, ch. 52, § 93; Laws, 1993, ch. 441, § 94; reenacted and amended, Laws, 1994, ch. 622, § 126; reenacted without change, Laws, 1997, ch. 496, § 91; reenacted without change, Laws, 2001, ch. 488, § 93, eff from and after July 1, 2001.

Cross References — Appointment of a receiver for an association, see § 81-12-183.
Supervisory merger in lieu of appointing a conservator, see § 81-12-184.
Restrictions on appointment of conservator, see § 81-12-185.

RESEARCH REFERENCES

Am Jur. 13 Am. Jur. 2d, Building and Loan Associations §§ 1028 et seq., 1101, 1207.

5 Am. Jur. Pl & Pr Forms (Rev), Building and Loan Associations, Form 32.

CJS. 12A C.J.S., Building and Loan Associations, Savings and Loan Associations, and Credit Unions §§ 122 et seq.

§ 81-12-183. Appointment of receiver; powers of receiver; directors, officers and attorneys authorized to contest appointment; surrender of charter.

(1) If the commissioner shall find that: (a) the capital of an association is impaired, or (b) the association is concealing any assets, books or records, or (c) the members of such association are in actual danger of loss due to mismanagement, misappropriation of funds, fraud, violation of this chapter, or violation of any lawful rule of the commissioner, or (d) any association is in violation of an order or injunction, as provided in Section 81-12-181 or Section 81-12-183, which has become final in that the time to appeal has expired without appeal or a final order entered from which there can be no appeal, the

commissioner may apply immediately to the chancery court in the county in which the home office of the association is located for appointment of a receiver for such association, and such court shall have exclusive jurisdiction to determine the issues and all related matters. The commissioner shall suggest a person for such appointment who may be the commissioner. Such proceedings shall be given precedence over other cases pending in such court, and shall in every way be expedited. Such court shall make such appointment if it shall find that one or more such grounds exist, and a certified copy of the order of the court confirming such appointment shall be evidence thereof. Such receiver shall have all the powers and authority of a conservator plus the power to liquidate, and shall have such other powers and authority as may be expressed in the order of the court. If the commissioner or examiner is appointed receiver, he shall receive no additional compensation, but if another person is appointed, then the compensation of the receiver, as determined by the court, shall be paid from the assets of the association.

(2) The Federal Deposit Insurance Corporation shall be tendered appointment as receiver. If it accepts such appointment, it may, nevertheless, make loans on the security of or purchase at public or private sale any part or all of the assets of the association of which it is receiver, provided such loan or purchase is approved by such court.

(3) The procedure in such receivership action shall be in all other respects in accordance with the practice of such court, including all rights of appeal and review. The directors, officers and attorneys of an association in office at the time of the initiation of any proceeding under this or the preceding section are expressly authorized to contest any such proceeding and shall in the discretion of the court be reimbursed for reasonable expenses and attorney's fees by the association or from its assets. Any court having any such proceeding before it shall in its discretion allow and order paid reasonable expenses and attorney's fees for such directors, officers and attorneys. The charter of any association which is liquidated by a receiver shall be surrendered to the commissioner on the completion of such liquidation and cancelled by him.

SOURCES: Laws, 1977, ch. 445, § 56; reenacted, Laws, 1982, ch. 301, § 92; Laws, 1990 Ex Sess, ch. 52, § 94; Laws, 1993, ch. 441, § 95; reenacted and amended, Laws, 1994, ch. 622, § 127; reenacted without change, Laws, 1997, ch. 496, § 92; reenacted without change, Laws, 2001, ch. 488, § 94, eff from and after July 1, 2001.

Cross References — Appointment of receivers for insolvent banks, see §§ 81-9-17 et seq.

Impaired condition to transact business due to failure to make full payment of any withdrawal when due, see § 81-12-151.

Supervisory merger in lieu of appointing a receiver, see § 81-12-184.

Restrictions on appointment of receiver, see § 81-12-185.

RESEARCH REFERENCES

Am Jur. 5 Am. Jur. Pl & Pr Forms (Rev), Building and Loan Associations, Form 32.

§ 81-12-184. Supervisory merger.

If it appears to the commissioner that it is in the best interest of the depositors of an association, the general public, and the savings association industry within this state, the commissioner is hereby granted the authority to allow a supervisory merger of an association into another association in lieu of appointing a conservator or a receiver under the provisions of Section 81-12-181 or 81-12-183, provided the board of directors of each association has adopted a voluntary consent resolution authorizing a supervisory merger. The commissioner shall coordinate the supervisory merger with the appropriate federal regulatory authority.

SOURCES: Laws, 1983, ch. 431; reenacted, Laws, 1990 Ex Sess, ch. 52, § 95; Laws, 1993, ch. 441, § 96; reenacted and amended, Laws, 1994, ch. 622, § 128; reenacted without change, Laws, 1997, ch. 496, § 93; reenacted without change, Laws, 2001, ch. 488, § 95, eff from and after July 1, 2001.

§ 81-12-185. Restrictions on appointment of conservator or receiver.

No appointment of a conservator shall be confirmed, and no receiver shall be appointed or private property seized, with respect to an association which is not in an impaired condition, unless the court finds that the alleged wrongdoing cannot be reasonably corrected as provided in this chapter or otherwise as provided by law without appointment of a conservator or receiver.

SOURCES: Laws, 1977, ch. 445, § 57; reenacted, Laws, 1982, ch. 301, § 93; Laws, 1990 Ex Sess, ch. 52, § 96; Laws, 1993, ch. 441, § 97; Laws, 1994, ch. 622, § 129; reenacted without change, Laws, 1997, ch. 496, § 94; reenacted without change, Laws, 2001, ch. 488, § 96, eff from and after July 1, 2001.

RESEARCH REFERENCES

Am Jur. 5 Am. Jur. Pl & Pr Forms (Rev), Building and Loan Associations, Form 32.

§ 81-12-187. Foreign associations; definition; conditions for doing business in state; injunction against foreign association doing business without approval.

(1) For the purposes of this section, the term "foreign association" shall include any person, firm, company, association, fiduciary, partnership or corporation, by whatever name called, actually engaged in the business of an

association, which is not organized under the provisions of this chapter or the laws of the United States as now or hereafter amended, the principal business office of which is located outside the territorial limits of this state.

(2) No foreign association shall do any business of an association within this state or maintain an office in this state for the purpose of doing such business unless an application is made and approval granted as provided herein for the charter of domestic associations. No foreign association shall be granted permission to do business in this state, except upon the same terms, provisions, requirements and conditions as the laws of the state in which the foreign association is incorporated require of a Mississippi association desiring to do business under the laws of the state in which such foreign corporation is organized and created.

(3) The commissioner shall conduct a complete investigation of the applicant at its expense.

(4) The commissioner shall examine and supervise all foreign associations doing any such business in this state in the same manner as he examines and supervises associations of this state, and they shall pay the supervision and examination fee imposed by Section 81-12-193, plus any additional costs as determined by the commissioner. The commissioner in his discretion may rely upon such official examinations, public and private audits, and copies of reports which are supplied to him.

(5) The commissioner hereby is authorized, empowered and directed to obtain an injunction or to take any other action necessary to prevent any foreign association from doing any business of an association in this state without approval.

SOURCES: Laws, 1977, ch. 445, § 58(1-5); reenacted, Laws, 1982, ch. 301, § 94; Laws, 1990 Ex Sess, ch. 52, § 97; Laws, 1993, ch. 441, § 98; Laws, 1994, ch. 622, § 130; reenacted without change, Laws, 1997, ch. 496, § 95; reenacted without change, Laws, 2001, ch. 488, § 97, eff from and after July 1, 2001.

Cross References — Activities not constituting doing business in the state, see § 81-12-189.

Assessment of certain fees against foreign associations qualified to do business in the state and definition of "capital" of foreign association, see § 81-12-193.

RESEARCH REFERENCES

CJS. 12 C.J.S., Building and Loan Associations, Savings and Loan Associations, and Credit Unions §§ 142 et seq.

§ 81-12-189. Foreign associations; activities of federal associations and certain foreign associations not constituting doing of business within state; subjectivity to suit.

(1) For the purposes of Section 81-12-187 and this section and any other law of this state prohibiting, limiting, regulating, charging or taxing the doing of business in this state by foreign associations or foreign corporations of any

type, any federal association the principal office of which is located outside this state, and any foreign association which is located outside this state, and any foreign association which is subject to state or federal supervision, or both, which by law is subject to periodic examination by such supervisory authority and to a requirement of periodic audit, shall not be considered to be doing business in this state, nor shall any of its intangible properties be deemed to have a business, commercial or actual situs in this state by reason of engaging in any of the following activities:

(a) The purchase, acquisition, holding, sale, assignment, transfer, collecting and enforcement of obligations or any interest therein secured by real estate mortgages or other instruments in the nature of a mortgage, covering real property located in this state, or the foreclosure of such instruments, or the acquisition of title to such property by foreclosure, or otherwise, as a result of default under such instruments, or the holding, protection, rental, maintenance and operation of said property so acquired, or the disposition thereof.

(b) The advertising or solicitation of savings accounts, or the making of any representations with respect thereto in this state through the media of the mail, radio, television, magazines, newspapers or any other media which are published or circulated within this state, provided that such advertising, soliciting or the making of such representations shall be accurately descriptive of the fact and shall conform to the limitations set forth in this chapter regarding associations.

(c) The purchase of a participating interest in loans of associations, subject to such regulations as the commissioner may adopt.

(2) Any foreign association or federal association described in subsection (1) which engages in any of the activities described in paragraph (a) thereof pursuant to the provisions of this section shall in any connection therewith be subject to suit in the courts of this state by this state and the citizens of this state, and service on such association shall be effected by serving the Secretary of State of this state, provided that the provisions of this section shall have no other application to the question of whether any foreign association or federal association is subject to service of process and suit in this state as a result of the transaction of business or other activities in this state.

SOURCES: Laws, 1977, ch. 445, § 58(6, 7); reenacted, Laws, 1982, ch. 301, § 95; Laws, 1990 Ex Sess, ch. 52, § 98; Laws, 1993, ch. 441, § 99; reenacted and amended, Laws, 1994, ch. 622, § 131; reenacted without change, Laws, 1997, ch. 496, § 96; reenacted without change, Laws, 2001, ch. 488, § 98, eff from and after July 1, 2001.

Cross References — Status of federal savings and loan associations domiciled in the State of Mississippi, see also § 81-12-191.

RESEARCH REFERENCES

CJS. 12A C.J.S., Building and Loan Associations, Savings and Loan Associations, and Credit Unions §§ 142 et seq.

§ 81-12-191. Federal associations domiciled in state.

Federal savings associations or federal savings and loan associations, domiciled in the State of Mississippi, incorporated pursuant to the laws of the United States, as now or hereafter amended, are not foreign corporations or foreign associations. Unless otherwise restricted by laws of the United States, the depositors, members and stockholders of federal associations shall possess all of the rights, privileges and benefits, duties and obligations that are now or may hereafter be provided by the laws of this state for depositors, members and stockholders of associations organized under the laws of this state; unless otherwise restricted by the laws of the United States, federal associations shall possess all of the benefits, immunities, exemptions, duties and obligations that are now or may hereafter be provided by the laws of this state for associations organized under the laws of this state. This provision is additional and supplemental to any provision which, by specific reference, is applicable to federal associations and the members thereof.

SOURCES: Laws, 1977, ch. 445, § 59; reenacted, Laws, 1982, ch. 301, § 96; Laws, 1990 Ex Sess, ch. 52, § 99; Laws, 1993, ch. 441, § 100; Laws, 1994, ch. 622, § 132; reenacted without change, Laws, 1997, ch. 496, § 97; reenacted without change, Laws, 2001, ch. 488, § 99, eff from and after July 1, 2001.

Editor's Note — For prospective repeal date of this section, see § 81-12-209.

§ 81-12-193. Fees.

The department shall charge and collect for:

(a) Filing articles of incorporation and issuing a certificate of incorporation, a minimum fee of Five Hundred Dollars ($500.00) up to a maximum fee of Two Thousand Five Hundred Dollars ($2,500.00) as fixed by the commissioner.

(b) For filing annual reports, the commissioner shall assess every association organized under the laws of this state engaging in the business of an association, and every foreign association qualified to do business in this state under the provisions of Section 81-12-187, in accordance with the following schedule, setting forth the maximum that may be assessed:

(i) Seventy-five Dollars ($75.00).

(ii) Every such association whose total assets exceed One Hundred Thousand Dollars ($100,000.00) shall further pay in addition to the minimum assessment of Seventy-five Dollars ($75.00), Fifty Cents (50¢) for each One Thousand Dollars ($1,000.00) or fraction thereof of assets in excess of One Hundred Thousand Dollars ($100,000.00). All money accruing from such assessment shall be used for the maintenance of the department.

(iii) The commissioner shall, during the month of January in each year, or as soon thereafter as practicable, prepare and send to each association a statement of the assessments due under this section, based upon the total assets of each association as of December 31 of the preceding year. The assessment shall be payable in accordance with the statement so furnished and shall be paid within ten (10) days after the date fixed for their payment. Such assessment shall constitute a lien on the assets of each association until paid. Any association failing to make payment of an installment within ten (10) days as provided in this section shall be liable for a penalty of ten percent (10%) of the amount in default for each day thereafter. All assessments and penalties provided in this section shall be payable as set forth in this section, and when collected by the commissioner shall be delivered to the State Treasurer to be placed to the credit of the account of the department.

(iv) If it appears to the commissioner that the fees assessed under this section shall produce more than the requirements of the estimated operating budget approved for the department for the ensuing assessment period, the commissioner shall authorize a uniform percentage reduction to be applied to the fees to be paid by the individual associations.

(v) Associations organized and in existence as of June 30, 1994, shall not be billed or liable for the annual report assessment due for the close of this period only. The next annual report assessment shall be due based upon assets as of December 31, 1994, and annually thereafter.

(c) Filing articles of merger when the resulting association is a state association, a minimum fee of Five Hundred Dollars ($500.00) up to a maximum fee of Two Thousand Five Hundred Dollars ($2,500.00), as fixed by the commissioner.

(d) Filing an application for conversion from a national association to a state association, a minimum fee of Five Hundred Dollars ($500.00) up to a maximum fee of Two Thousand Five Hundred Dollars ($2,500.00) as fixed by the commissioner.

(e) Filing an application for a branch bank, branch office, or drive-in teller window, a minimum fee of Two Hundred Fifty Dollars ($250.00) up to a maximum fee of One Thousand Five Hundred Dollars ($1,500.00), as fixed by the commissioner.

The commissioner shall publish a schedule of fees applicable to all associations within his jurisdiction.

SOURCES: Laws, 1977, ch. 445, § 60; Laws, 1980, ch. 483; reenacted, Laws, 1982, ch. 301, § 97; Laws, 1983, ch. 481; Laws, 1990 Ex Sess, ch. 52, § 100; Laws, 1993, ch. 441, § 101; reenacted and amended, Laws, 1994, ch. 622, § 133; reenacted without change, Laws, 1997, ch. 496, § 98; reenacted without change, Laws, 2001, ch. 488, § 100, eff from and after July 1, 2001.

§ 81-12-195. Offering and sale of savings accounts exempt from securities regulations.

The offering and sale of savings accounts of any association subject to the provisions of this chapter are hereby exempted from all provisions of law of this state which provide for the supervision and regulation of the sale of securities, and the sale of any such accounts shall be legal without any action or approval whatsoever on the part of any official authorized to license, regulate and supervise the sale of securities.

SOURCES: Laws, 1977, ch. 445, § 61(1); reenacted, Laws, 1982, ch. 301, § 98; Laws, 1990 Ex Sess, ch. 52, § 101; Laws, 1993, ch. 441, § 102; Laws, 1994, ch. 622, § 134; reenacted without change, Laws, 1997, ch. 496, § 99; reenacted without change, Laws, 2001, ch. 488, § 101, eff from and after July 1, 2001.

RESEARCH REFERENCES

Am Jur. 69 Am. Jur. 2d, Securities Regulation-State §§ 1 et seq.

§ 81-12-197. Acknowledgment or proof of written instrument in which association interested; membership or employee status of public officer taking as affecting validity.

No public officer qualified to take acknowledgments or proofs of written instruments shall be disqualified from taking the acknowledgment or proof of any instrument in writing in which an association is interested by reason of his membership in or employment by an association so interested, and any such acknowledgments or proofs heretofore taken are hereby validated.

SOURCES: Laws, 1977, ch. 445, § 61(2); reenacted, Laws, 1982, ch. 301, § 99; Laws, 1990 Ex Sess, ch. 52, § 102; Laws, 1993, ch. 441, § 103; Laws, 1994, ch. 622, § 135; reenacted without change, Laws, 1997, ch. 496, § 100; reenacted without change, Laws, 2001, ch. 488, § 102, eff from and after July 1, 2001.

§ 81-12-199. Untrue, false and malicious statements calculated to injure reputation or business of certain savings associations; penalty for making.

Whoever willfully and knowingly makes, issues, circulates, transmits or causes to be made any statement, written, printed, reproduced in any manner, or by word of mouth, which is untrue in fact and is directly false and malicious in that it is calculated to injure the reputation or business of any association, federal association, federal home loan bank, the appropriate federal regulatory authority, or the Federal Deposit Insurance Corporation, shall upon conviction be fined not more than One Thousand Dollars ($1,000.00) or imprisoned for not more than one (1) year, or both.

SOURCES: **Laws, 1977, ch. 445, § 61(3); reenacted, Laws, 1982, ch. 301, § 100; Laws, 1990 Ex Sess, ch. 52, § 103; Laws, 1993, ch. 441, § 104; reenacted and amended, Laws, 1994, ch. 622, § 136; reenacted without change, Laws, 1997, ch. 496, § 101; reenacted without change, Laws, 2001, ch. 488, § 103, eff from and after July 1, 2001.**

§ 81-12-201. Advertising for deposits prohibited; exception as to certain state and federal banks, credit unions and associations.

From and after July 1, 1977, no person, whether or not incorporated, other than a bank or credit union organized under the laws of this state or of the United States, or an association organized under the laws of this state or of the United States, shall advertise by newspaper, radio, television, or other commercial media for deposits of money from the public. The commissioner shall have authority to enforce this prohibition by injunctive relief in the chancery court in which any such person may be a resident or domiciled.

SOURCES: **Laws, 1977, ch. 445, § 62; reenacted, Laws, 1982, ch. 301, § 101; Laws, 1990 Ex Sess, ch. 52, § 104; Laws, 1993, ch. 441, § 105; Laws, 1994, ch. 622, § 137; reenacted without change, Laws, 1997, ch. 496, § 102; reenacted without change, Laws, 2001, ch. 488, § 104, eff from and after July 1, 2001.**

§ 81-12-203. Applicability of chapter to previously incorporated savings associations; enforceability of obligations of such associations.

(1) The name, rights, powers, privileges and immunities of every savings association heretofore incorporated in this state shall be governed by the provisions of this chapter to the same extent and effect as if such association had been incorporated pursuant hereto. Every such association shall possess the rights, powers, privileges and immunities and shall be subject to the duties, liabilities, disabilities and restrictions conferred and imposed by this chapter, notwithstanding anything to the contrary in its certificates of incorporation, bylaws, constitution or rules.

(2) All obligations to any such association heretofore contracted shall be enforceable by it and in its name, and demands, claims and rights of action against any such association may be enforced against it as fully and completely as they could have been enforced heretofore.

SOURCES: **Laws, 1977, ch. 445, § 63; reenacted, Laws, 1982, ch. 301, § 102; Laws, 1990 Ex Sess, ch. 52, § 105; Laws, 1993, ch. 441, § 106; Laws, 1994, ch. 622, § 138; reenacted without change, Laws, 1997, ch. 496, § 103; reenacted without change, Laws, 2001, ch. 488, § 105, eff from and after July 1, 2001.**

§ 81-12-205. Appeal from final rule, regulation or order of commissioner or board.

Any interested person aggrieved by any final rule, regulation or order of the commissioner or the board, shall have the right, regardless of the amount involved to appeal to the Circuit Court of the First Judicial District of Hinds County, except that if the appellant is an applicant for a charter the appeal shall be taken to the circuit court of the county in which the institution sought to be chartered would be domiciled, and if the appellant is seeking to establish a branch office, the appeal shall be taken to the circuit court of the county in which the branch is proposed to be located. Such appeal shall be taken and perfected as hereinafter provided, within thirty (30) days from the date of such final rule, regulation or order; and the circuit court may affirm such rule, regulation or order, or reverse same for further proceedings as justice may require. All such appeals shall be taken and perfected, heard and determined either in termtime or in vacation on the record, including a transcript of pleadings and testimony, both oral and documentary, filed and heard before the commissioner or the board, and such appeal shall be heard and disposed of promptly by the court as a preference cause. In perfecting any appeal provided by this section, the provisions of law respecting notice to the reporter and the allowance of bills of exception, now or hereafter in force respecting appeals from the circuit court to Supreme Court shall be applicable. However, the reporter shall transcribe his notes and file the transcript of the record with the commissioner or the board within thirty (30) days after approval of the appeal bond. Upon the filing with the commissioner or the board of a petition for appeal to the circuit court, it shall be the duty of the commissioner or the board, as promptly as possible, and in any event within sixty (60) days after approval of the appeal bond, to file with the clerk of the circuit court to which the appeal is taken, a copy of the petition for appeal and of the rule, regulation or order appealed from, and the original and one (1) copy of the transcript of the record of proceedings in evidence before the commissioner or the board. After the filing of the petition, the appeal shall be perfected by the filing of bond in the sum of Five Hundred Dollars ($500.00) with two (2) good and sufficient sureties or with a surety company qualified to do business in Mississippi as the surety, conditioned to pay the cost of such appeal; the bond to be approved by the commissioner or by the clerk of the court to which such appeal is taken. The perfection of an appeal shall not stay or suspend the operation of any rule, regulation or order of the commissioner or the board, but the judge of the circuit court to which the appeal is taken may award a writ of supersedeas to any rule, regulation or order of the commissioner or the board after five (5) days' notice to the commissioner or the board and after hearing. Any order or judgment staying the operation of any rule, regulation or order of the commissioner or the board shall contain a specific finding, based upon evidence submitted to the circuit judge and identified by reference thereto, that great or irreparable damage would result to the appellant if he is denied relief, and the stay shall not become effective until a supersedeas bond shall have been executed and filed with and approved by the clerk of the court payable to the state. The bond shall be in an amount fixed by the circuit judge and conditioned as the circuit judge may direct in the order granting the supersedeas.

SOURCES: Laws, 1977, ch. 445, § 64; reenacted, Laws, 1982, ch. 301, § 103; Laws, 1990 Ex Sess, ch. 52, § 106; Laws, 1993, ch. 441, § 107; reenacted and amended, Laws, 1994, ch. 622, § 139; reenacted without change, Laws, 1997, ch. 496, § 104; reenacted without change, Laws, 2001, ch. 488, § 106, eff from and after July 1, 2001.

Cross References — Appeal of order temporarily removing officer or director, see § 81-12-24.

§ 81-12-207. Solicitation of deposits by association or its representatives without complying with provisions of chapter; penalty.

Where no other criminal penalty is specifically provided in this chapter, if any association or its agents, attorneys or solicitors, officers or directors, or any other person shall solicit or negotiate any deposit of money or in anywise transact any business regulated hereunder in this state without having first fully complied in good faith with the provisions of this chapter, such association and any such person, upon conviction, shall be punished by a fine of not more than Five Thousand Dollars ($5,000.00) or imprisonment for not more than five (5) years, or both.

SOURCES: Laws, 1977, ch. 445, § 65; reenacted, Laws, 1982, ch. 301, § 104; Laws, 1990 Ex Sess, ch. 52, § 107; Laws, 1993, ch. 441, § 108; Laws, 1994, ch. 622, § 140; reenacted without change, Laws, 1997, ch. 496, § 105; reenacted without change, Laws, 2001, ch. 488, § 107, eff from and after July 1, 2001.

§ 81-12-209. Repealed.

Repealed by Laws, 2001, ch. 488, § 108, eff from and after July 1, 2001.

[Laws, 1979, ch. 301, § 52; Laws, 1982, ch. 301, § 105; Laws, 1990 Ex Sess, ch. 52, § 108; Laws, 1993, ch. 441, § 109; Laws, 1994, ch. 622, § 141; Laws, 1997, ch. 496, § 106, eff from and after July 1, 1997.]

Editor's Note — Former § 81-12-209 was a repealer provision for §§ 81-12-1 through 81-12-207.

§ 81-12-211. Unsafe or unfair practice; notice of charges.

(1) If any person or association is engaging in, or has engaged in, or is about to engage in, any unsafe or unsound practice, or unfair and discriminatory practice, in conducting the association's business, or violation of any other law, rule, regulation, order or condition imposed in writing by the commissioner, the commissioner may issue a notice of charges to such person or institution. A notice of charges shall specify the acts alleged to sustain a cease and desist order, and state the time and place at which a hearing shall be held.

A hearing before the commissioner on the charges shall be held no earlier than seven (7) days, and no later than fifteen (15) days, after issuance of the notice. The charged institution is entitled to a further extension of seven (7) days upon filing a request with the commissioner. The commissioner may also issue a notice of charges if he has reasonable grounds to believe that any person or association is about to engage in any unsafe or unsound business practice, or any violation of this chapter, or any other law, rule, regulation or order. If, by a preponderance of the evidence, it is shown that any person or association is engaged in, or has been engaged in, or is about to engage in, any unsafe or unsound business practice, or unfair and discriminatory practice or any violation of this chapter, or any other law, rule, regulation or order, a cease and desist order shall be issued which shall be permanently binding upon the person or institution until terminated by the commissioner.

(2) If any person or association is engaging in, has engaged in, or is about to engage in any unsafe or unsound practice, or unfair and discriminatory practice, in conducting the association's business, or any violation of any law, rules, regulation, order or condition imposed in writing by the commissioner, and the commissioner has determined that immediate corrective action is required, the commissioner may issue a temporary cease and desist order without prior notice. A temporary cease and desist order shall be effective immediately upon issuance for a period of fifteen (15) days, and may be extended once for a period of fifteen (15) days. Such an order shall state its duration on its face and the words "Temporary Cease and Desist Order." A hearing before the commissioner shall be held within the time that the order remains effective, at which time a temporary order may be dissolved or made permanent.

SOURCES: Laws, 1996, ch. 400, § 9; brought forward, Laws, 1997, ch. 496, § 107, eff from and after July 1, 1997.

§ 81-12-213. Association in violation of provisions or cease and desist order; civil penalty.

(1) Except as otherwise provided in this chapter, any association which is found to have violated any provision of this chapter may be ordered to pay a civil penalty not to exceed Twenty Thousand Dollars ($20,000.00). Any association which is found to have violated or failed to comply with any cease and desist order issued under the authority of this chapter may be ordered to pay a civil penalty not to exceed Twenty Thousand Dollars ($20,000.00) for each day that the violation or failure to comply continues.

(2) To enforce the provisions of this section, the commissioner is authorized to assess such penalty and to appear in a court of competent jurisdiction and to move the court to order payment of the penalty. Prior to the assessment of the penalty, a hearing shall be held by the commissioner.

(3) Nothing in this section shall prevent anyone damaged by an association from bringing a separate cause of action in a court of competent jurisdiction.

SOURCES: Laws, 1996, ch. 400, § 10; brought forward, Laws, 1997, ch. 496, § 108, eff from and after July 1, 1997.

§ 81-12-215. Director, officer or employee violation of provisions or cease and desist order; civil penalty.

(1) Any person, whether a director, officer or employee, who is found to have violated any provision of this chapter, whether willfully, or as a result of gross negligence, gross incompetency or recklessness, may be ordered to pay a civil penalty not to exceed Five Thousand Dollars ($5,000.00) per violation. Any person who is found to have violated or failed to comply with any cease and desist order issued under the authority of this chapter may be ordered to pay a civil penalty not to exceed Five Thousand Dollars ($5,000.00) per violation for each day that the violation or failure to comply continues.

(2) To enforce the provisions of this section, the commissioner is authorized to assess such penalty, to appear in a court of competent jurisdiction and to move the court to order payment of the penalty. Prior to the assessment of the penalty, a hearing shall be held by the commissioner.

(3) Nothing in this section shall prevent anyone damaged by a director, officer or employee of an association from bringing a separate cause of action in a court of competent jurisdiction.

SOURCES: Laws, 1996, ch. 400, § 11; brought forward, Laws, 1997, ch. 496, § 109, eff from and after July 1, 1997.

§ 81-12-217. Commissioner to issue supervisory control for association.

(1) Whenever the commissioner determines that a solvent association is conducting its business in an unsafe or unsound manner, or in any fashion which threatens the financial integrity or sound operation of the association, the commissioner may serve a notice of charges on the association, requiring it to show why it should not be placed under supervisory control. Such notice of charges shall specify the grounds for supervisory control, and set the time and place for a hearing. A hearing before the commissioner pursuant to such notice shall be held within fifteen (15) days after issuance of the notice of charges.

(2) If, after the hearing provided above, the commissioner determines that supervisory control of the association is necessary to protect the association's members, customers, stockholders or creditors, or the general public, the commissioner shall issue an order taking supervisory control of the association.

(3) If the order taking supervisory control becomes final, the commissioner may appoint an agent to supervise and monitor the operations of the association during the period of supervisory control. During the period of supervisory control, the association shall act in accordance with such instructions as may be given by the commissioner, directly or through his supervisory agent, and shall not fail to act, except when to do so would violate an outstanding cease and desist order.

(4) Within one hundred eighty (180) days of the date the order taking supervisory control becomes final, the commissioner shall issue an order approving a plan for the termination of supervisory control. The plan may provide for:

(a) The issuance by the association of capital stock;
(b) The appointment of one or more officers and/or directors;
(c) The reorganization, merger or consolidation of the association;
(d) The dissolution and liquidation of the association;
(e) Other such measures as determined by the commissioner.

The order approving the plan shall not take effect until thirty (30) days after issuance during which time period an appeal may be filed in accordance with the provisions of Section 81-12-205.

(5) All costs of this proceeding shall be paid by the association.

(6) For the purpose of this section, an order shall be deemed final if:

(a) No appeal is filed within the specific time allowed for the appeal; or
(b) All judicial appeals are exhausted.

(7) If an association is insolvent, the provisions of Section 81-12-183 shall apply.

SOURCES: Laws, 1996, ch. 400, § 12; brought forward, Laws, 1997, ch. 496, § 110, eff from and after July 1, 1997.

§ 81-12-219. Appeal of cease and desist order.

Any person or association against whom a cease and desist order is issued or a fine is imposed may have such order or fine reviewed by a court of competent jurisdiction. Except as otherwise provided, an appeal may be made only within thirty (30) days of the issuance of the order or the imposition of the fine, whichever is later.

SOURCES: Laws, 1996, ch. 400, § 13; brought forward, Laws, 1997, ch. 496, § 111, eff from and after July 1, 1997.

§ 81-12-221. Reimbursement of fines or penalties.

No person who is fined or penalized for a violation of any criminal provision of this chapter shall be reimbursed or indemnified in any fashion by the association for such fine or penalty.

SOURCES: Laws, 1996, ch. 400, § 14; brought forward, Laws, 1997, ch. 496, § 112, eff from and after July 1, 1997.

§ 81-12-223. Cumulative fines and penalties.

All penalties, fines and remedies provided by this chapter shall be cumulative.

SOURCES: Laws, 1996, ch. 400, § 15; brought forward, Laws, 1997, ch. 496, § 113, eff from and after July 1, 1997.

§ 81-12-225. Credit allowed; discretion of commissioner.

In all examinations no association shall be allowed credit in excess of its sound value for a note or security of which the principal and interest is over twelve (12) months past due; nor for any bond in excess of the real value thereof; nor for any stock of its own held more than twelve (12) months; nor for any unsecured overdrafts that may have existed for a greater period than thirty (30) days next preceding it, except that the period shall be ninety (90) days for unsecured overdrafts upon which interest is being charged if the association has a written policy authorizing such overdrafts for not more than ninety (90) days. Only such overdrafts shall be considered as secure as are advanced against products or actual existing values evidenced by warehouse receipts or bills of lading, against bills of exchange drawn in good faith against actual existing values, or against funds on deposit by the depositor whose account is overdrawn, and who has pledged those funds as security for such overdraft, and in making up the statement of the condition of such association any such item shall be charged off (but if desired a note shall be appended giving details thereof). But the discretion of the commissioner or examiner may be exercised in cases of estates in litigation or administration, and in pending suits, if the security affected thereby is ample, in the opinion of the commissioner or examiner making such examination.

SOURCES: Laws, 1996, ch. 400, § 27; brought forward, Laws, 1997, ch. 496, § 114, eff from and after July 1, 1997.

§ 81-12-227. Amount of liability to association for loans.

The liability to an association by a person, company, corporation or firm for money loaned, including in the liability of such person, company or firm, where a partnership, the liabilities of the several members thereof, shall not exceed twenty percent (20%) of the aggregate unimpaired capital and unimpaired surplus of said association.

The following shall not be restricted to or considered as coming within the limitations of twenty percent (20%) herein prescribed:

(a) Loans and discounts secured by warehouse receipts or shippers' order bills of lading representing actual existing values, provided the amount of such loans and discounts shall not exceed eighty-five percent (85%) of the market value of the commodities representing the actual existing values.

(b) Loans and discounts secured by bonds, certificates or notes constituting direct obligations of the United States government, or bonds fully guaranteed by the United States government, or by full faith and credit obligations of the State of Mississippi; provided, however, the commissioner shall from time to time determine and fix the maximum percentage of the par value of all such securities that may be loaned.

(c) Loans and discounts to the extent that they are secured or covered by guaranties, or by commitments, or agreements to take over or purchase the same, made by any federal reserve bank, or by the United States, or any department, bureau, board, commission or establishment of the United States, including any corporation wholly owned directly or indirectly by the United States; provided that such guaranties, agreements or commitments are unconditional and are to be performed by payment within sixty (60) days after demand; provided, further, that the commissioner is hereby authorized to define the terms herein used and may by regulation control the making of loans under this paragraph (c).

(d) Loans and discounts secured in full by funds on deposit in time or savings accounts with the lending bank to the credit of the borrower.

Any officer or director who shall approve or make loans prohibited in this section shall be liable individually for the full amount of the principal and interest of any such loan. If the commissioner shall discover, in any examination of any open bank that there is a loss on any loan made in violation of this section, he shall make demand of all directors and officers approving or making such loan for payment of the entire unpaid balance on any such loan.

Like demand shall be made and suit brought by the receiver of any bank in liquidation. Provided, however, this section shall not apply to loans to the State of Mississippi, or to any political subdivision thereof, nor to any levee district.

SOURCES: Laws, 1996, ch. 400, § 28; brought forward, Laws, 1997, ch. 496, § 115, eff from and after July 1, 1997.

§ 81-12-229. Commissioner to furnish copy of call reports; fee; failure or refusal; misdemeanor.

A copy of the call reports of any association shall be furnished to any person or corporation requesting the same for a reasonable fee prescribed by the commissioner, which shall be collected by the commissioner and shall be paid into the department maintenance fund. If the commissioner fails or refuses to furnish copies of the report when so requested and tendered the proper fee; or if he fails to account for any such fees received by him; or if any person other than the commissioner, deputy commissioner, an examiner, or assistant furnishes any copy of such association report to anyone, whether for a consideration or without consideration, such person shall be guilty of a misdemeanor and shall be fined not less than Fifty Dollars ($50.00) or be imprisoned not more than one (1) month in the county jail, or both. However, this section shall not be construed to prevent any officer of the association from furnishing to anyone a statement of such association.

SOURCES: Laws, 1996, ch. 400, § 29; brought forward, Laws, 1997, ch. 496, § 116, eff from and after July 1, 1997.

CHAPTER 13

Credit Unions

Sec.
81-13-1. Organization of credit union; hearing upon denial of license; commencement of corporate existence.
81-13-2. Repealed.
81-13-3. Contents of articles of association; amendments to articles.
81-13-4. Insurance of accounts by National Credit Union Administration.
81-13-5. Filing, contents, and amendment of bylaws.
81-13-7. Repealed.
81-13-9. Restriction of term “credit union.”
81-13-11. Power.
81-13-12. Authorization to operate as federal credit union.
81-13-13. Membership.
81-13-15. Supervision by Department of Banking and Consumer Finance; rules and regulations; reports by credit unions.
81-13-17. Examination by Commissioner of Banking and Consumer Finance; powers of Commissioner; fees; acceptance of examination performed by National Credit Union Administration.
81-13-19. Failure to make reports or pay fees; duties and authority of Commissioner of Banking and Consumer Finance; suspension of credit union’s operations.
81-13-21. Appointment of conservator; powers and duties of conservator.
81-13-23. Fiscal year.
81-13-25. Elections.
81-13-27. Directors, officers; special duty of directors.
81-13-28. Member or employee not to participate in matters in which he or she has pecuniary interest; penalty.
81-13-29. Directors and members of supervisory committees not to receive compensation; compensation of treasurer.
81-13-31. Repealed.
81-13-33. Supervisory committee; suspension of directors, committee members or officers; review of credit union practices; audit and report.
81-13-35. Capital.
81-13-37. Shares and deposits of minors and in trust.
81-13-39. Authority to lend or invest funds; interest rates.
81-13-41. Power to borrow.
81-13-43. Loans.
81-13-45. When borrower may repay loan.
81-13-47. Repealed.
81-13-49. Repealed.
81-13-51. Portion of net income set apart at close of fiscal year for reserve fund.
81-13-53. Dividends.
81-13-55. Expulsion of members.
81-13-57. Refunds to expelled or withdrawing members.
81-13-58. Deposit in name of two or more persons; payments to successors of deceased depositors without administration.
81-13-59. Voluntary dissolution.
81-13-60. Establishment of branch office.
81-13-61. Change of place of business.
81-13-62. Electronic banking terminals.
81-13-63. Taxation.

81-13-65. Conversion from state to federal credit union and from federal to state credit union.
81-13-67. Repealed.
81-13-69. Method of voting by members; special meetings; number of votes per member; proxies; matters subject to vote.
81-13-71. Penal laws applicable.
81-13-73. Record keeping.
81-13-75. Conflicting laws repealed.
81-13-77. Repealed.
81-13-79. Merger of credit unions; certificate of merger; transfer of rights, assets and interests.
81-13-81. Approval of foreign credit unions.

§ 81-13-1. Organization of credit union; hearing upon denial of license; commencement of corporate existence.

(1) Any seven (7) persons who are residents of the State of Mississippi of full age and of good moral and sound business character eligible under this chapter to become members of a credit union may prepare in duplicate articles of association and incorporation, and sign the same and cause the same to be acknowledged by one (1) of the signers before an officer competent to take acknowledgments to the effect that the same has been signed and executed by all of the signers. Before any credit union may be organized and formed, the prospective incorporators shall give notice to the Department of Banking and Consumer Finance by petition to the Commissioner of Banking and Consumer Finance of their desire to engage in business as a credit union and shall at the time file with the commissioner two (2) copies of the proposed articles of incorporation, duly sworn to by one (1) of the prospective incorporators.

(2) Upon receipt of a petition for a certificate of incorporation to form a credit union and such additional information as may be required by the commissioner, the commissioner shall promptly give consideration to the petition and make an examination of the proposed articles of incorporation to determine if they meet all requirements of the law. The commissioner shall then make an investigation to determine that the prerequisites of this chapter have been complied with and that:

(a) The character, responsibility and general fitness of the persons named in the petition are such as to command confidence and warrant belief that the business of the proposed credit union will be honestly and efficiently conducted in accordance with the intent and purpose of this chapter and that the proposed credit union will have qualified management;

(b) There is need for the proposed credit union to serve the proposed field of membership, which shall be specific in detail; and

(c) The anticipated volume and type of business and field of membership of the proposed credit union is such as to indicate profitable operation within a reasonable time.

When the commissioner has completed the examination and made his investigation, he shall record his preliminary findings and recommendations in writing.

(3) The commissioner shall consider the findings and shall hear such oral testimony as he may wish, and may also receive information and hear testimony bearing upon the approval of the organization and operation of the new credit union. When the commissioner has completed the examination and investigation, the commissioner shall record the findings in writing and render a decision as to whether or not said credit union should be authorized to do business. If the decision is favorable, the incorporators shall then present one (1) of said copies of the articles of association and incorporation, with a recording fee of Ten Dollars ($10.00) to the Secretary of State of the State of Mississippi who shall receive and file the same, whereupon said persons entering into said articles shall be and become an incorporated credit union association under the laws of the State of Mississippi, without individual liability for debts, obligation or other liabilities of said association, in ex cess of such membership fees as remain due and unpaid by said members, respectively, and may sue and be sued in the name of said association. The Secretary of State shall record the said articles in his office and return the original so recorded to said association. The association shall file articles for record in the office of the clerk of the chancery court in the county where the principal place of business is located.

(4) If the commissioner shall deny the application for such charter, he shall notify the applicant in writing of such denial and shall include in such notification the reason or reasons for such denial. When any application for a charter is denied, the applicant shall have the right to a hearing thereon by and before the commissioner by filing, within thirty (30) days after the date of the receipt of the notification of denial, a written petition with the commissioner requesting such hearing. Upon the filing of any such request, the commissioner shall fix a date for the hearing, which date shall not be later than thirty (30) days from the date of the filing of the request, and notice shall be given to the public of the fact that such hearing will be held by the publication of a notice in some newspaper published in the county where the business is proposed to be conducted not less than ten (10) days before the date of the hearing, which notice shall specify the date, time, pl ace and purpose of the hearing, said hearing to be in the office of the commissioner in Jackson, Mississippi. If there is no newspaper published in the county where the business is proposed to be conducted, such notice shall be placed in a newspaper having general circulation in such county.

(5) All such hearings shall be held and conducted in the office of the commissioner, and the applicant and any and all other interested persons may appear and present such evidence as shall be relevant and material and the commissioner may cause the production and presentation of such evidence as deemed relevant and material. At all such hearings the applicant shall have the right to be represented by counsel and to examine and cross-examine any and all witnesses that may testify at such hearing. For the purpose of compelling the attendance of witnesses at such hearing the commissioner shall have the power to issue subpoenas therefor in the same manner as subpoenas are issued in circuit courts. All witnesses who shall testify at any such hearing

shall be sworn in the same manner as witnesses are sworn in the circuit courts and shall be subject to penalties for perjury as is otherwise provided under the laws of this state.

(6) At all such hearings the commissioner shall cause the evidence presented to be taken down and a record made thereof and the commissioner shall make a written finding and decision with reference to the question presented and shall cause same to be included in the record. The original of said record shall be kept as a permanent record by the commissioner and a copy thereof shall be furnished to the applicant. If the application for the charter shall be denied as a result of such hearing, the applicant may obtain a review of such denial by filing a petition for the review of such denial within thirty (30) days from the date of such denial to the circuit court of the county in which it is sought to organize such credit union. The review by said court shall be on the record made before the commissioner and copies of all applications, bonds and other papers and documents of every kind filed with the commissioner in connection with the application and said hearing shall be included in said record along with the transcript of the evidence.

(7) The corporate existence of an association shall begin on the date the certificate of incorporation is issued to the credit union, and such existence shall be perpetual unless terminated in accordance with the provisions of this chapter.

(8) At any time the commissioner determines that a credit union ceases to offer normal credit union services to its members as a result of a merger, voluntary liquidation, involuntary liquidation or any other cause, the commissioner shall be authorized to pay the required fee to record the cancellation of the charter of the credit union in the county where originally recorded and in the Secretary of State's office.

SOURCES: Codes, 1930, § 4230; 1942, § 5391; Laws, 1924, ch. 177; Laws, 1962, ch. 236, § 1; Laws, 1979, ch. 307, § 1; reenacted, Laws, 1982, ch. 304, § 1; Laws, 1987, ch. 381, § 1; Laws, 1995, ch. 374, § 1; reenacted without change, Laws, 1997, ch. 368, § 1; reenacted without change, Laws, 2001, ch. 408, § 1, eff from and after July 1, 2001.

Cross References — Duties of secretary of state generally, see § 7-3-5.
Definition of the term "comptroller", see § 81-1-57.
Procedure for obtaining certificate of incorporation by bank, see § 81-3-13.
Incorporation of savings associations, see § 81-12-25 et seq.
Farmers' credit associations, see §§ 81-17-1 et seq.

RESEARCH REFERENCES

Am Jur. 10 Am. Jur. 2d, Banks and Financial Institutions §§ 1, 2 et seq., 146, 147.

13 Am. Jur. 2d, Building and Loan Associations §§ 1 et seq.

7 Am. Jur. Legal Forms 2d, Credit Unions §§ 79:41 et seq. (state credit unions).

CJS. 9 C.J.S., Banks and Banking §§ 3 et seq.

12 C.J.S., Building and Loan Associations, Savings and Loan Associations, and Credit Unions §§ 1 et seq.

§ 81-13-2. Repealed.

Repealed by Laws of 1987, ch. 381, § 25, eff from and after July 1, 1987.

[En Laws, 1979, ch. 307, § 2; Laws, 1980, ch 312, § 36; reenacted, Laws, 1982, ch. 304, § 2]

Editor's Note — This section contained provisions relative to creation of a credit union board, board membership and expenses, board meetings, and board employees.

§ 81-13-3. Contents of articles of association; amendments to articles.

(1) The articles of association, in addition to such other provisions not in conflict with law as the organizers may desire, shall set forth provisions showing:

(a) The name of the proposed credit union (which shall include the words "Credit Union") and the city, town or village in which the principal office is to be located, if in a city, town or village, or the designation of the place not in a city, town or village in which the principal office is to be located.

(b) The name and address of the subscribers to the articles and the number of shares subscribed by each.

(c) A statement that incorporation is desired under this particular law and the par value of the shares (which shall not exceed Ten Dollars ($10.00)).

(d) That the association and its members will comply with all the laws, rules and regulations applicable to credit unions.

(2) The articles of association may be amended by an affirmative vote of a majority of the board of directors at a duly held meeting, and the filing with the Secretary of State and the Commissioner of Banking and Consumer Finance of duplicate copies of such amendment acknowledged in the manner provided for the acknowledgment of the original articles, and the approval of such amendment in writing by the commissioner. Such amendment shall be recorded in the Office of the Secretary of State upon the payment of a recording fee of Ten Dollars ($10.00), and shall be recorded in the office of the clerk of the chancery court of the county in which the principal place of business is situated. The proposed amendment must be set forth in the call for the meeting.

SOURCES: Codes, 1930, § 4231; 1942, § 5392; Laws, 1924, ch. 177; reenacted without change, 1982, ch. 304, § 3; Laws, 1987, ch. 381, § 2; reenacted and amended, 1995, ch. 374, § 2; reenacted without change, Laws, 1997, ch. 368, § 2; reenacted without change, Laws, 2001, ch. 408, § 2, eff from and after July 1, 2001.

RESEARCH REFERENCES

Am Jur. 7 Am. Jur. Legal Forms 2d, Credit Unions §§ 79:41 et seq. (state credit unions).

§ 81-13-4. Insurance of accounts by National Credit Union Administration.

No credit union shall accept any deposits unless or until it submits sufficient evidence that its accounts are insured by the National Credit Union Administration or by any successor thereto. Any credit union shall thereafter conduct business only while its accounts are insured.

SOURCES: Laws, 1979, ch. 307, § 3; reenacted, Laws, 1982, ch. 304, § 4; Laws, 1987, ch. 381, § 3; Laws, 1988, ch. 352, § 2; Laws, 1995, ch. 374, § 3; reenacted without change, Laws, 1997, ch. 368, § 3; reenacted without change, Laws, 2001, ch. 408, § 3, eff from and after July 1, 2001.

Cross References — Requirement of consent of insurer of accounts for merger of credit unions, see § 81-13-79.

§ 81-13-5. Filing, contents, and amendment of bylaws.

(1) Before making loans or receiving deposits, the credit union shall file with the Department of Banking and Consumer Finance a set of its bylaws with certificate of adoption which in addition to such other provisions as may be contained therein shall show:

(a) The date of the annual meeting, which will be before March 31 of each year, the manner of notification of meetings, the number of members constituting a quorum, and regulations as to voting.

(b) The number of directors (which shall not be less than five (5)) and officers, all of whom must be members, the names of the first board of directors, their powers and duties, together with the duties of officers elected by the board of directors.

(c) The qualifications for membership.

(d) The number of members of the credit committee, if any, and of the supervisory committee (which shall be not less than three (3) each), together with their respective powers and duties.

(e) The conditions under which shares may be issued, transferred and withdrawn, deposits received and withdrawn, loans made and repaid and the funds otherwise invested.

(f) The charges, if any, which shall be made for failure to meet obligations punctually, whether or not the corporation shall have the power to borrow, the method of receipting for money, the manner of accumulating a reserve fund and determining a dividend, and such other matters, consistent with the provisions of this chapter, as may be required to protect the organization and make possible the operation of the credit union in question.

(2) Amendments to the bylaws may be made by members at a regular or special meeting, if the proposed amendment is set forth in the call for the meeting and is approved by a majority of the members present at a meeting at which a quorum is present. The amendment of bylaws shall not become effective until approved in writing by the commissioner.

SOURCES: Codes, 1930, § 4232; 1942, § 5393; Laws, 1924, ch. 177; reenacted without change, Laws, 1982, ch. 304, § 5; Laws, 1987, ch. 381, § 4; reenacted and amended, Laws, 1995, ch. 374, § 4; reenacted without change, Laws, 1997, ch. 368, § 4; reenacted without change, Laws, 2001, ch. 408, § 4, eff from and after July 1, 2001.

Cross References — Bylaws of savings and loan associations, see § 81-12-25.
Supervisory committee, see § 81-13-33.

§ 81-13-7. Repealed.

Repealed by Laws of 1987, ch. 381, § 25 eff from and after July 1, 1987.

[Codes, 1930, § 4233; 1942, § 5394; Laws, 1924, ch. 177; reenacted without change, Laws, 1982, ch. 304, § 5]

Editor's Note — Former Section 81-13-7 related to amendment of by-laws.

§ 81-13-9. Restriction of term "credit union."

The use by any person, corporation, association or copartnership except corporations formed under the provisions of this chapter, of any name or title which contains the words "credit union" shall be a misdemeanor.

SOURCES: Codes, 1930, § 4234; 1942, § 5395; Laws, 1924, ch. 177; reenacted without change, Laws, 1982, ch. 304, § 7; reenacted, Laws, 1995, ch. 374, § 5; reenacted without change, Laws, 1997, ch. 368, § 5; reenacted without change, Laws, 2001, ch. 408, § 5, eff from and after July 1, 2001.

§ 81-13-11. Power.

In addition to the general powers authorized for corporations in Section 79-3-7, a credit union shall have the following specific powers:

(a) It may receive the savings of its members in payment for shares and on deposit and investments by other credit unions on deposit.

(b) It may make loans to members, authorized by the credit committee, and may make loans to other credit unions, committee members and directors, as authorized by the board of directors.

(c) It may invest, through the board of directors, only in accordance with NCUA's rules and regulations, Federal Credit Union Act, and any interpretive rulings issued by the NCUA.

The funds of the credit union shall be used first, however, for loans to members and preference shall be given to the smaller loan in the event the available funds do not permit all loans to be made which have been approved by the credit committee or loans officers.

SOURCES: Codes, 1930, § 4235; 1942, § 5396; Laws, 1924, ch. 177; Laws, 1962, ch. 233; Laws, 1968, ch. 280, § 1; reenacted without change, Laws, 1982, ch. 304, § 8; Laws, 1987, ch. 381, § 5; reenacted and amended, Laws, 1995, ch. 374, § 6; reenacted without change, Laws, 1997, ch. 368, § 6; reenacted without change, Laws, 2001, ch. 408, § 6, eff from and after July 1, 2001.

Editor's Note — Section 79-3-7, referred to in (4), was repealed by Laws of 1987, ch, 486, § 17.06 eff from and after passage (approved January 1, 1988).

Cross References — Bonds of the Wavelands Regional Wastewater Management District as legal investments and securities, see § 49-17-199.

Bonds of the Mississippi Gulf Coast Regional Wastewater Authority as legal investments and securities, see § 49-17-339.

Investment in farm credit securities, see § 75-69-9.

RESEARCH REFERENCES

ALR. Authority of credit union to engage in "share-draft" business. 14 A.L.R.4th 1355.

§ 81-13-12. Authorization to operate as federal credit union.

Notwithstanding any other law to the contrary, the Commissioner of Banking and Consumer Finance by rule may authorize a credit union doing business under this chapter to engage in any activity in which it could engage, exercise any power it could exercise, or make any loan or investment it could make, if it were operating as a federal credit union.

SOURCES: Laws, 1987, ch. 381, § 6; reenacted, Laws, 1995, ch. 374, § 7; reenacted without change, Laws, 1997, ch. 368, § 7; reenacted without change, Laws, 2001, ch. 408, § 7, eff from and after July 1, 2001.

§ 81-13-13. Membership.

Membership shall consist of the incorporators and such natural persons as have been duly elected to membership and have paid the entrance fee as required by the bylaws, and have complied with such other requirements as the certificate of organization may contain, and successors-in-law to accounts of deceased members subject to individual approval by the board of directors. One entrance fee will be required for each account regardless of the number of joint owners. Other organizations (whether incorporated or not) composed primarily of the same individuals who are eligible to join the credit union are also eligible for membership. Credit unions shall be organized within groups which have a common bond of occupation, association, or residence; provided that one (1) corporate central credit union sponsored by the Mississippi Credit Union League may accept as members the credit unions that are members of the Mississippi Credit Union League and shall include in its title the words "corporate central"; and provided further that one (1) credit union sponsored by the Mississippi Credit Union League may accept as members the members of credit unions holding membership in the Mississippi Credit Union League, the members of their immediate families, the employees of the Mississippi Credit

Union League and the members of their immediate families, organizations or associations of such persons, and other persons residing in this state who do not have the services of a credit union available to them, such credit union to be known as the Mississippi League Central Credit Union, subject to such limitations on membership as may be from time to time adopted by the board of directors in the minutes of the central credit union.

SOURCES: Codes, 1930, § 4236; 1942, § 5397; Laws, 1924, ch. 177; Laws, 1968, ch. 280, § 2; Laws, 1982, chs. 304, § 9; 340; reenacted, Laws, 1995, ch. 374, § 8; reenacted without change, Laws, 1997, ch. 368, § 8; reenacted without change, Laws, 2001, ch. 408, § 8, eff from and after July 1, 2001.

Cross References — Applicability of the requirements of this section to mergers of credit unions, see § 81-13-79.

RESEARCH REFERENCES

Am Jur. 7 Am. Jur. Legal Forms 2d, Credit Unions § 79:62 (application for membership).

§ 81-13-15. Supervision by Department of Banking and Consumer Finance; rules and regulations; reports by credit unions.

Credit unions shall be subject to the supervision of the Department of Banking and Consumer Finance. The Commissioner of Banking and Consumer Finance is empowered with authority to promulgate from time to time rules and regulations concerning the operation of credit unions; provided that such rules and regulations shall be consistent with and in conformity with the laws of the State of Mississippi. Credit unions shall make a report of condition thereto at least annually on blank forms to be supplied by said department. Credit unions shall transmit to the department such call reports within a time limitation established by the commissioner; however, such time limitation cannot exceed that set by the National Credit Union Administration. For any failure or delay in furnishing this report, the credit union shall be subject to an administrative fine, which may be imposed by the commissioner, of Fifty Dollars ($50.00) a day for each day while in such default. Reports shall be verified by both the chief elected official and the treasurer and additional reports may be required by the said department.

SOURCES: Codes, 1930, § 4237; 1942, § 5398; Laws, 1924, ch. 177; Laws, 1975, ch. 444, § 1; Laws, 1979, ch. 307, § 4; reenacted, Laws, 1982, ch. 304, § 10; Laws, 1987, ch. 381, § 7; reenacted and amended, Laws, 1995, ch. 374, § 9; reenacted without change, Laws, 1997, ch. 368, § 9; reenacted without change, Laws, 2001, ch. 408, § 9, eff from and after July 1, 2001.

Cross References — Failure to make annual report and penalty therefor, see § 81-13-15.

§ 81-13-17. Examination by Commissioner of Banking and Consumer Finance; powers of Commissioner; fees; acceptance of examination performed by National Credit Union Administration.

Each credit union shall be examined at least once per eighteen-month period by the Commissioner of Banking and Consumer Finance. The commissioner may conduct other examinations and the commissioner or examiners of the Department of Banking and Consumer Finance shall at all times be given free access to all the books, papers, securities and other sources of information in respect to the credit union. For that purpose he shall have the power to subpoena and examine personally or through one (1) of his deputies, or examiners, duly authorized, witnesses on oath and documents pertaining to the business of the credit union. The fees for examination shall be determined by the commissioner by assessing the association according to the cost based on the average daily cost of all examiners of the department, plus actual and necessary expenses. The commissioner shall have the authority to prescribe supervision fees at the rate of Ten Cents (10¢) per One Thousand Dollars ($1,000.00) of assets, and not be less than Twenty Dollars ($20.00) nor more than Two Hundred Dollars ($200.00) a year for overhead expenses of the department in supervising the credit union. The commissioner shall send each such credit union a statement of the amount due by it and shall specify how the same shall be paid. The fees shall be due and payable in accordance with the statement so furnished and shall be paid within ten (10) days after the date fixed for their payment. Such fees shall constitute a lien on the assets of the credit union until paid. Any such credit union failing to make payment within ten (10) days as herein provided shall be liable to a penalty of ten percent (10%) of the amount in default for each day thereafter.

In the event the commissioner's office, because of work load or other good sufficient cause, is unable to conduct an annual examination of a credit union as provided for in this section, the commissioner is hereby authorized to accept the examination of any credit union performed by the National Credit Union Administration or by any succession thereto. However, in no case shall the commissioner be authorized to accept any such examination of any credit union performed by the NCUA or its successor for any two (2) consecutive eighteen-month periods.

SOURCES: Codes, 1930, § 4238; 1942, § 5399; Laws, 1924, ch. 177; Laws, 1962, ch. 236, § 2; Laws, 1971, ch. 514, § 1; Laws, 1979, ch. 307, § 5; reenacted, Laws, 1982, ch. 304, § 11; Laws, 1987, ch. 381, § 8; reenacted and amended, Laws, 1995, ch. 374, § 10; reenacted, Laws, 1997, ch. 368, § 10; Laws, 1997, ch. 330, § 1; reenacted without change, Laws, 2001, ch. 408, § 10, eff from and after July 1, 2001.

Joint Legislative Committee Note — Section 1 of ch. 330, Laws of 1997 provides for one version effective from and after passage (approved March 17, 1997) and a second version effective July 2, 1997, which amended this section. Section 10 of ch. 368, Laws of 1997, reenacted this section, effective July 1, 1997. As set out above, this section reflects the language of the second version of Section 1 of ch. 330, Laws of 1997, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, the amendment with the latest effective date shall supersede all other amendments to the same section taking effect earlier.

§ 81-13-19. Failure to make reports or pay fees; duties and authority of Commissioner of Banking and Consumer Finance; suspension of credit union's operations.

(1) If it appears that any credit union is bankrupt or insolvent, or that it has violated any other provisions of law, or is in danger of loss due to mismanagement or fraud, the commissioner shall issue an order temporarily suspending the credit union's operations for not less than thirty (30) nor more than sixty (60) days. The board of directors shall be given notice by registered mail of such suspension, which notice shall include a list of the reasons for such suspension, or a list of the specific violations of law.

(2) Upon receipt of such suspension notice, the credit union shall cease all operations, except those operations authorized by the commissioner. The board of directors shall file with the commissioner a reply to the suspension notice, and may request a hearing to present a plan of corrective actions proposed if the credit union desires to continue operations. The board of directors may request that the credit union be declared insolvent and a liquidating agent be appointed.

(3) Upon receipt of evidence from the suspended credit union that the conditions causing the order of suspension have been corrected, the commissioner, upon finding that such conditions have been corrected, may revoke the suspension notice and permit the credit union to resume normal operations.

(4) If the commissioner, after issuing notice of suspension and providing an opportunity for a hearing, rejects the credit union's plan to continue operations, he may issue a notice of involuntary liquidation and appoint a liquidating agent. The commissioner shall continue his order suspending the credit union's operation until final determination or liquidation. The credit union may request the chancery court of the county in which the home office of the credit union is located to take such action as it may deem necessary under the law.

(5) If, within the suspension period, the credit union fails to answer the suspension notice or request a hearing, the commissioner may then revoke the credit union's charter, appoint a liquidating agent and liquidate the credit union.

SOURCES: Codes, 1930, § 4239; 1942, § 5400; Laws, 1924, ch. 177; Laws, 1979, ch. 307, § 6; reenacted, Laws, 1982, ch. 304, § 12; Laws, 1987, ch. 381, § 9; Laws, 1995, ch. 374, § 11; reenacted, Laws, 1997, ch. 368, § 11; Laws, 1997, ch. 330, § 2; reenacted without change, Laws, 2001, ch. 408, § 11, eff from and after July 1, 2001.

Joint Legislative Committee Note — Section 2 of ch. 330, Laws of 1997 provides for one version effective from and after passage (approved March 17, 1997) and a second version effective July 2, 1997, which amended this section. Section 11 of ch. 368, Laws of 1997, reenacted this section, effective July 1, 1997. As set out above, this section reflects the language of the second version of Section 2 of ch. 330, Laws of 1997, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, the amendment with the latest effective date shall supersede all other amendments to the same section taking effect earlier.

§ 81-13-21. Appointment of conservator; powers and duties of conservator.

(1) If it appears to the Commissioner of Banking and Consumer Finance, as a result of any examination or from any report made to him, that the public interest may be served by the appointment of a conservator, and if he shall find that: (a) the capital of a credit union is impaired, or (b) the credit union is concealing any assets, books or records or (c) the members of such credit union are in actual danger of loss due to mismanagement, misappropriation of funds, fraud, violation of this chapter, or violation of any lawful rule of the board or (d) has lost its field of membership or (e) the credit union is in violation of an order or injunction, as authorized by this section, which has become final since time to appeal has expired without appeal or a final order entered from which there can be no appeal, the commissioner may appoint a conservator for such credit union, which may be the commissioner or any other person, and upon such appointment the commissioner shall apply immediately to the chancery court in the county in which the home office of the credit union is located for confirmation of such appointment, and such court shall have exclusive jurisdiction to determine the issues and all related matters. Such proceedings shall be given precedence over other cases pending in such court, and shall in every way be expedited. Such court shall confirm such appointment if it shall find that one or more of such grounds exist, and a certified copy of the order of the court confirming such appointment shall be evidence thereof. Such conservator shall have the power and authority provided in this chapter and such other power and authority as may be expressed in the order of the court. Such conservator shall endeavor promptly to remedy the situations complained of by the commissioner in his application for confirmation of such appointment. Within six (6) months of the date of such appointment, or within twelve (12) months if the court shall extend such period of six (6) months, such credit union shall be returned to the board of directors thereof and thereafter shall be managed and operated as if no conservator had been appointed. If the commissioner serves as conservator, he shall receive no additional compensation, but if another person is appointed, then the compensation of the conservator, as determined by the court, shall be paid by the credit union. A certified copy of the order of the court discharging such conservator and returning such credit union to the directors thereof shall be sufficient evidence thereof.

(2) Any conservator appointed shall have all the rights, powers and privileges possessed by the officers, board of directors and members of the credit union and shall have the power, with the approval of the court, to limit

or condition withdrawals from the credit union and to effectuate a system for payment of withdrawals.

(3) The directors and officers shall remain in office and the employees shall remain in their respective positions, but the conservator may remove any director, officer or employee, provided the order of removal of a director or officer shall be approved by the chancery court.

(4) While the credit union is in the charge of a conservator, members or borrowers of such credit union shall continue to make payments to the credit union in accordance with the terms and conditions of their contracts. All expenses of the credit union during such conservatorship shall be paid by the credit union.

SOURCES: Codes, 1930, § 4240; 1942, § 5401; Laws, 1924, ch. 177; Laws, 1979, ch. 307, § 7; reenacted, Laws, 1982, ch. 304, § 13; Laws, 1987, ch. 381, § 10; Laws, 1995, ch. 374, § 12; reenacted without change, Laws, 1997, ch. 368, § 12; reenacted without change, Laws, 2001, ch. 408, § 12, eff from and after July 1, 2001.

Cross References — Bank examiner in charge of insolvent bank, see § 81-9-7.

§ 81-13-23. Fiscal year.

The credit union fiscal year shall end at the close of business on the thirty-first day of December.

SOURCES: Codes, 1930, § 4241; 1942, § 5402; Laws, 1924, ch. 177; reenacted without change, Laws, 1982, ch. 304, § 14; Laws, 1987, ch. 381, § 11; reenacted, Laws, 1995, ch. 374, § 13; reenacted without change, Laws, 1997, ch. 368, § 13; reenacted without change, Laws, 2001, ch. 408, § 13, eff from and after July 1, 2001.

§ 81-13-25. Elections.

At an annual meeting the members shall elect a board of directors and a supervisory committee. The credit union's board of directors shall determine whether the credit union will: (1) have a credit committee elected by the membership; (2) have a credit committee appointed by the board; and/or (3) will hire loan officers. The board shall include this decision in their bylaws and the board shall determine and record in the minutes of a duly held meeting, the authority of the credit committee, if any, and/or the loan officers. Unless the number of members of the credit union is less than eleven (11), no member of the board shall be a member of either of said committees. All members of the board and committees and all officers shall be sworn to discharge their duties faithfully and shall hold their several offices for such terms as may be provided in the bylaws. The oath shall be subscribed by the individual taking it and certified by the officer before whom it is taken and shall be transmitted within ten (10) days after the oath to the Commissioner of Banking and Consumer Finance and filed and preserved in his office. For any failure or delay in transmitting the oath, the credit union shall be subject to an administrative fine, which may be imposed by the commissioner, of Ten Dollars ($10.00) per day for each day the documents are not received.

SOURCES: Codes, 1930, § 4242; 1942, § 5403; Laws, 1924, ch. 177; reenacted without change, Laws, 1982, ch. 304, § 15; Laws, 1987, ch. 381, § 12; reenacted and amended, Laws, 1995, ch. 374, § 14; reenacted, Laws, 1997, ch. 368, § 14; Laws, 1997, ch. 330, § 3; reenacted without change, Laws, 2001, ch. 408, § 14, eff from and after July 1, 2001.

Joint Legislative Committee Note — Section 3 of ch. 330, Laws of 1997 provides for one version effective from and after passage (approved March 17, 1997) and a second version effective July 2, 1997, which amended this section. Section 14 of ch. 368, Laws of 1997, reenacted this section, effective July 1, 1997. As set out above, this section reflects the language of the second version of Section 3 of ch. 330, Laws of 1997, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, the amendment with the latest effective date shall supersede all other amendments to the same section taking effect earlier.

Cross References — Methods of balloting, see § 81-13-69.

RESEARCH REFERENCES

Am Jur. 7 Am. Jur. Legal Forms 2d, Credit Unions § 79:81 (notice-annual meeting of shareholders).

§ 81-13-27. Directors, officers; special duty of directors.

At the first meeting and at each first meeting in the fiscal year, the board of directors shall elect from their own number a president or chairman, vice president or vice chairman, treasurer, and may elect a secretary. At each board, special or annual meeting, the president/chairman shall appoint a recording secretary to accurately record the actions taken at said meeting. The board of directors shall have the general management of the affairs, funds and records of the corporation and shall meet as often as may be necessary. Unless the bylaws shall specifically reserve any or all of the duties to the members, it shall be the special duty of the directors:

(a) To act upon all applications for membership and on the expulsion of members;

(b) To determine, from time to time, rates of interest which shall be allowed on deposits and charged on loans;

(c) To fix the amount of the surety bond which shall be required of each officer having the custody of funds;

(d) To fix the maximum number of shares which may be held by, and the maximum amount which may be loaned to any one (1) member; to declare dividends and recommend amendments to the bylaws;

(e) To fill vacancies in the board of directors and credit committee until the election and qualification of successors;

(f) To have charge of the investment of funds of the corporation, other than loans to members, and to perform such other duties as the members may, from time to time, authorize.

SOURCES: Codes, 1930, § 4243; 1942, § 5404; Laws, 1924, ch. 177; reenacted without change, Laws, 1982, ch. 304, § 16; reenacted and amended, Laws, 1995, ch. 374, § 15; reenacted without change, Laws, 1997, ch. 368, § 15; reenacted without change, Laws, 2001, ch. 408, § 15, eff from and after July 1, 2001.

Cross References — Qualification and oath of bank directors, see § 81-5-45.

§ 81-13-28. Member or employee not to participate in matters in which he or she has pecuniary interest; penalty.

A member of the board of directors or a member of the credit committee or supervisory committee or an employee of a credit union may not participate in the deliberation or the determination of a question affecting his own pecuniary interest or the pecuniary interest of a corporation, partnership or association in which he is interested. Any person who violates this section may not thereafter serve as an officer, agent or employee of a credit union.

SOURCES: Laws, 1987, ch. 381, § 13; reenacted, Laws, 1995, ch. 374, § 16; reenacted without change, Laws, 1997, ch. 368, § 16; reenacted without change, Laws, 2001, ch. 408, § 16, eff from and after July 1, 2001.

§ 81-13-29. Directors and members of supervisory committees not to receive compensation; compensation of treasurer.

No member of the credit or supervisory committee shall receive any compensation for his services as a member of said committees; provided, however, that one (1) elected official of the board of directors may be compensated for services rendered.

SOURCES: Codes, 1930, § 4244; 1942, § 5405; Laws, 1924, ch. 177; Laws, 1981, ch. 330, § 1; reenacted, Laws, 1982, ch. 304, § 17; reenacted and amended, Laws, 1995, ch. 374, § 17; reenacted without change, Laws, 1997, ch. 368, § 17; reenacted without change, Laws, 2001, ch. 408, § 17, eff from and after July 1, 2001.

§ 81-13-31. Repealed.

Repealed by Laws of 1995, ch. 374, § 18, eff from and after July 1, 1995.

[Codes, 1930, § 4245; 1942, § 5406; Laws, 1924, ch. 177; Laws, 1954, ch. 204; Laws, 1956, ch. 179; Laws, 1960, ch. 184, § 1; Laws, 1968, ch. 280, § 3; Laws, 1975, ch. 444, § 2; reenacted, Laws, 1982, ch. 304, § 18; Laws, 1987, ch. 381, § 14]

Editor's Note — Former § 81-13-31 was entitled: Approval of loans by credit committee or loan officers; reports; loan applications; security requirements; designation of alternate credit committee member.

§ 81-13-33. Supervisory committee; suspension of directors, committee members or officers; review of credit union practices; audit and report.

The supervisory committee shall, at frequent intervals, inspect the securities, cash and accounts of the credit union and supervise the acts of the board of directors, credit committee and officers, any or all of whom the supervisory committee may, at any time, by a unanimous vote suspend. Within seven (7) days after such suspension, the supervisory committee shall cause notice to be given the members of a special meeting to take action on such suspension, the call for the meeting to indicate clearly its purpose. By a majority vote the committee may call a meeting of the shareholders to consider any violation of this chapter or of the bylaws, or any practice of the credit union which, in the opinion of said committee, is unsafe and unauthorized. The committee shall fill vacancies in their own number until the next annual meeting of the members. Annually the supervisory committee shall make or cause to be made a thorough audit of the receipts, disbursements, income, assets and liabilities of the credit union for the said fiscal year and shall make a full report thereon to the directors, which report shall be filed and preserved with the records of the credit union. The supervisory committee shall make a report to the members at the annual meeting.

SOURCES: Codes, 1930, § 4246; 1942, § 5407; Laws, 1924, ch. 177; reenacted without change, Laws, 1982, ch. 304, § 19; reenacted and amended, Laws, 1995, ch. 374, § 19; reenacted without change, Laws, 1997, ch. 368, § 18; reenacted without change, Laws, 2001, ch. 408, § 18, eff from and after July 1, 2001.

§ 81-13-35. Capital.

The capital of a credit union shall consist of the regular and any other reserve accounts, the undivided earnings and any other earnings accounts, allowances for loss accounts. A credit union shall have a lien on the shares of any member and on the dividends payable thereon for and to the extent of any loan towards the liquidation of said member's indebtedness. A credit union may, upon the resignation or expulsion of a member, cancel the shares of such member and apply the withdrawal value of such shares first towards the liquidation of said member's indebtedness. A credit union may charge an entrance or membership fee as may be provided in the bylaws.

SOURCES: Codes, 1930, § 4247; 1942, § 5408; Laws, 1924, ch. 177; reenacted without change, Laws, 1982, ch. 304, § 20; reenacted and amended, Laws, 1995, ch. 374, § 20; reenacted without change, Laws, 1997, ch. 368, § 19; reenacted without change, Laws, 2001, ch. 408, § 19, eff from and after July 1, 2001.

Cross References — Capital stock of banking corporation, see § 81-3-11.

§ 81-13-37. Shares and deposits of minors and in trust.

Shares may be issued and deposits received in the name of a minor, without a guardian, and in trust in accordance with applicable law.

SOURCES: Codes, 1930, § 4248; 1942, § 5409; Laws, 1924, ch. 177; reenacted without change, Laws, 1982, ch. 304, § 21; reenacted and amended, Laws, 1995, ch. 374, § 21; reenacted without change, Laws, 1997, ch. 368, § 20; reenacted without change, Laws, 2001, ch. 408, § 20, eff from and after July 1, 2001.

Cross References — Deposits of minors in banks, see § 81-5-59.
Payment of funds to minors by savings associations, see § 81-12-135.

§ 81-13-39. Authority to lend or invest funds; interest rates.

A credit union may lend to its members at reasonable rates of interest, which shall not exceed one and three-fourths percent (1-¾%) per month, computed on unpaid balances, or invest the funds accumulated as herein provided. Fines and penalties shall not be considered as interest. A charge of Ten Dollars ($10.00) in lieu of interest may be made on any loan payable in a single payment, and a charge of Fifteen Dollars ($15.00) in lieu of interest may be made on any loan payable in installments.

SOURCES: Codes, 1930, § 4249; 1942, § 5410; Laws, 1924, ch. 177; Laws, 1980, ch. 492, § 4; Laws, 1982, chs. 304, § 22; 468, § 4; Laws, 1984, ch. 501, § 4; Laws, 1986, ch. 510, § 14; Laws, 1987, ch. 381, § 15; reenacted, Laws, 1995, ch. 374, § 22; reenacted without change, Laws, 1997, ch. 368, § 21; reenacted without change, Laws, 2001, ch. 408, § 21, eff from and after July 1, 2001.

Editor's Note — Laws of 1980, ch. 492, §§ 6, 7, provide as follows:

"SECTION 6. The provisions of this act shall apply only to contracts, agreements, or evidences of indebtedness entered into on or after the effective date of this act, and shall not defeat, extinguish or render void any claim or defense existing with respect to contracts, agreements or evidences of indebtedness entered into prior to the effective date of this act."

"SECTION 7. This act shall not be construed as stating explicitly and by its terms that the State of Mississippi does not want the provisions of sections 501(a)(1), 511 and 521 through 523 of the Depository Institutions Deregulation and Monetary Control Act of 1980 to apply with respect to loans, mortgages, credit sales, and advances made in this state, and the preemption of state law provided by such sections shall remain in full force and effect in the State of Mississippi."

Laws of 1982, ch. 468, § 6, provides as follows:

"SECTION 6. This act shall not be construed as stating explicitly and by its terms that the State of Mississippi does not want the provisions of Sections 501(a)(1), 511 and 521 through 523 of the Depository Institutions Deregulation and Monetary Control Act of 1980 to apply with respect to loans, mortgages, credit sales, and advances made in this state, and the preemption of state law provided by such sections shall remain in full force and effect in the State of Mississippi."

Laws of 1984, ch. 501, § 6, provides as follows:

"SECTION 6. This act shall not be construed as stating explicitly and by its terms that the State of Mississippi does not want the provisions of Sections 501(a)(1), 511, and 521 through 523 of the Depository Institutions Deregulation and Monetary Control Act of 1980, as amended, to apply with respect to loans, mortgages, credit sales, and advances made in this state, and the preemption of state law provided by such sections, as amended, shall remain in full force and effect in the State of Mississippi."

Laws of 1986, ch. 510, § 17, effective July 1, 1986, provides as follows:

"SECTION 17. This act shall not be construed as stating explicitly and by its terms that the State of Mississippi does not want the provisions of Sections 501(a)(1), 511, and 521 through 523 of the Depository Institutions Deregulation and Monetary Control Act of 1980, as amended, to apply with respect to loans, mortgages, credit sales, and advances made in this state, and the preemption of state law provided by such sections, as amended, shall remain in full force and effect in the State of Mississippi."

Cross References — Interest generally, see §§ 75-17-1 et seq.

RESEARCH REFERENCES

ALR. Preemption Issues Under Depository Institutions Deregulation and Monetary Control Act. 28 A.L.R. Fed. 2d 467.

§ 81-13-41. Power to borrow.

A credit union shall have the power to borrow from any source, but the total of such borrowing shall at no time exceed fifty percent (50%) of the capital and surplus of the borrowing credit union.

SOURCES: Codes, 1930, § 4250; 1942, § 5411; Laws, 1924, ch. 177; Laws, 1975, ch. 444, § 3; reenacted, Laws, 1982, ch. 304, § 23; Laws, 1995, ch. 374, § 23; reenacted without change, Laws, 1997, ch. 368, § 22; reenacted without change, Laws, 2001, ch. 408, § 22, eff from and after July 1, 2001.

§ 81-13-43. Loans.

(1) Loans to members may be made only in accordance with the NCUA's rules and regulations, Federal Credit Union Act, state statutes, and any interpretive rulings issued by the NCUA.

(2) No officer or committee member shall act as endorser or guarantor for other borrowers from the same credit union.

SOURCES: Codes, 1930, § 4251; 1942, § 5412; Laws, 1924, ch. 177; Laws, 1962, ch. 237; Laws, 1971, ch. 514, § 2; Laws, 1975, ch. 444, § 4; Laws, 1979 ch. 307, § 8; reenacted, Laws, 1982, ch. 304, § 24; Laws, 1987, ch. 381, § 16; reenacted and amended, Laws, 1995, ch. 374, § 24; reenacted without change, Laws, 1997, ch. 368, § 23; reenacted without change, Laws, 2001, ch. 408, § 23, eff from and after July 1, 2001.

§ 81-13-45. When borrower may repay loan.

A borrower may repay the whole or any part of his loan on any day on which the office of the corporation is open for the transaction of business.

SOURCES: Codes, 1930, § 4252; 1942, § 5413; Laws, 1924, ch. 177; reenacted without change, Laws, 1982, ch. 304, § 25; reenacted, Laws, 1995, ch. 374, § 25; reenacted without change, Laws, 1997, ch. 368, § 24; reenacted without change, Laws, 2001, ch. 408, § 24, eff from and after July 1, 2001.

§ 81-13-47. Repealed.

Repealed by Laws of 1987, ch 381, § 25 eff from and after July 1, 1987.

[Codes, 1930, § 4253; 1942, § 5414; Laws, 1924, ch. 177; Laws, 1950, ch. 305, § 2; Laws, 1968, ch. 280, § 4; Laws, 1975, ch. 444, § 5; reenacted, Laws, 1982, ch 304, § 26]

Editor's Note — Former § 81-13-47 related to loans to officers, committeemen, and members who had left the field of membership.

§ 81-13-49. Repealed.

Repealed by Laws of 1995, ch. 374, § 26, eff from and after July 1, 1995.

[Codes, 1930, § 4254; 1942, § 5415; Laws, 1924, ch. 177; reenacted without change, Laws, 1982, ch. 304, § 27]

Editor's Note — Former § 81-13-49 was entitled: Reserve fund.

§ 81-13-51. Portion of net income set apart at close of fiscal year for reserve fund.

Immediately before the payment of each dividend, and in no event less than one (1) time per year, the net income of the credit union shall be determined. From this amount, there shall be set aside, as a regular reserve against losses on loans and against such other losses as may be specified in regulations prescribed under this chapter, sums as follows:

A credit union whose accounts are insured by the National Credit Union Administration, as required by this chapter, shall set aside and maintain its reserve funds in the manner promulgated and prescribed by the administrator of the National Credit Union Administration. Provided, however, that said reserve funds shall be no less than those prescribed by the Commissioner of Banking and Consumer Finance, who may, upon written notice, require additional reserves to protect the capital structures of any credit union. The board of directors may elect to set apart to the reserve fund any amount deemed necessary if it determines that potential contingencies require additional reserves. The reserve fund shall belong to the credit union and shall be held to meet contingencies and shall not be distributed to the members except upon dissolution of the credit union.

SOURCES: Codes, 1930, § 4255; 1942, § 5416; Laws, 1924, ch. 177; Laws, 1950, ch. 305, § 1; Laws, 1968, ch. 280, § 5; Laws, 1971, ch. 514, § 3; Laws, 1975, ch. 444, § 6; Laws, 1979, ch. 307, § 9; reenacted, Laws, 1982, ch. 304, § 28; Laws, 1987, ch. 381, § 17; Laws, 1995, ch. 374, § 27; reenacted without change, Laws, 1997, ch. 368, § 25; reenacted without change, Laws, 2001, ch. 408, § 25, eff from and after July 1, 2001.

Cross References — Insurance of credit unions by National Credit Union Association, see § 81-13-4.

§ 81-13-53. Dividends.

The board of directors of a credit union may declare and pay a dividend from net earnings or accumulated net undivided earnings remaining after the statutory reserve has been set aside.

SOURCES: Codes, 1930, § 4256; 1942, § 5417; Laws, 1924, ch. 177; Laws, 1960, ch. 184, § 2; Laws, 1968, ch. 280; reenacted without change, Laws, 1982, ch. 304, § 29; Laws, 1987, ch. 381, § 18; reenacted and amended, Laws, 1995, ch. 374, § 28; reenacted without change, Laws, 1997, ch. 368, § 26; reenacted without change, Laws, 2001, ch. 408, § 26, eff from and after July 1, 2001.

§ 81-13-55. Expulsion of members.

At any duly held meeting the board of directors, by a two-thirds (⅔) vote of those present may expel from the corporation any member thereof.

SOURCES: Codes, 1930, § 4257; 1942, § 5418; Laws, 1924, ch. 177; reenacted without change Laws, 1982, ch. 304, § 30; reenacted and amended, Laws, 1995, ch. 374, § 29; reenacted without change, Laws, 1997, ch. 368, § 27; reenacted without change, Laws, 2001, ch. 408, § 27, eff from and after July 1, 2001.

Cross References — Refunds to expelled or withdrawing members, see § 81-13-57.

§ 81-13-57. Refunds to expelled or withdrawing members.

All amounts paid in on shares of an expelled or withdrawing member with any dividends credited to his shares to the date of expulsion or withdrawal shall be paid to said member but only as funds therefor become available and after deducting any amounts due to the corporation by said member. All deposits of an expelled or withdrawing member, with any interest accrued, shall be paid to such member, subject to ninety (90) days' notice, and after deducting any amounts due to the corporation by said member. Said member, when withdrawing shares or deposits, shall have no further right in said credit union or to any of its benefits, but such expulsion or withdrawal shall not operate to relieve such member from any remaining liability to the corporation.

SOURCES: Codes, 1930, § 4258; 1942, § 5419; Laws, 1924, ch. 177; reenacted without change, Laws, 1982, ch. 304, § 3; reenacted, Laws, 1995, ch. 374, § 30; reenacted without change, Laws, 1997, ch. 368, § 28; reenacted without change, Laws, 2001, ch. 408, § 28, eff from and after July 1, 2001.

§ 81-13-58. Deposit in name of two or more persons; payments to successors of deceased depositors without administration.

When a deposit has been made or is hereafter made in the name of two (2) or more persons, payable to any one (1) of those persons, or payable to any one (1) of those persons or the survivor, or payable to any one (1) of those persons or to the survivor or survivors, or payable to the persons as joint tenants, the deposit or any part thereof or interest or dividends thereon may be paid to any one (1) of those persons, without liability whether one or more of those persons is living or not, and the receipt of acquittance of the person so paid shall be a valid and sufficient release and discharge to the credit union for any payment so made. The making of a deposit in that form, or the making of additions thereto, shall create a presumption in any action or proceeding to which either the credit union or any survivor is a party of the intention of all the persons named on the deposit to vest title to the deposit and the additions thereto and all interest or dividends thereon in the survivor or survivors. Any credit union may pay to the successor of a deceased depositor, as defined in Section 91-7-322(2), without necessity of administration, any sum to the credit of the decedent not exceeding Twelve Thousand Five Hundred Dollars ($12,500.00), without liability to any other persons, relatives or beneficiaries, and the receipt of acquittance of the person so paid shall be a valid and sufficient release and discharge to the credit union for any payment so made. This section shall apply to all credit unions, including state and federal credit unions within the state. The term "deposit" as used in this section shall include, but not be limited to, any form of deposit or account, such as a savings account, checking account, time deposit, demand deposit or certificate of deposit, whether negotiable, nonnegotiable or otherwise.

SOURCES: Laws, 2001, ch. 458, § 4, eff from and after July 1, 2001.

Cross References — Payment of indebtedness or delivery of personal property of decedent to decedent's successor, see § 91-7-322.

§ 81-13-59. Voluntary dissolution.

At any meeting, called for the purpose, notice of the purpose being contained in the call, a majority of the entire membership may vote to dissolve the corporation and shall, thereupon signify their consent to such dissolution in writing and shall file such consent with the Commissioner of Banking and Consumer Finance, attested by a majority of its officers, with a statement of the names and addresses of the directors and officers, duly verified. The commissioner, upon receipt of satisfactory proof of the solvency of the corporation, shall execute in duplicate a certificate to the effect that such consent and statement have been filed and that it appears therefrom that the corporation had complied with this section. Such duplicate certificate shall be filed by such corporation in the office of the clerk of the chancery court of the county in which said corporation has its place of business and thereupon such credit union shall be dissolved and shall cease to carry o n business except for the purpose of adjusting and winding up its affairs. It shall, by its board of directors, then proceed to adjust and wind up its business, be empowered to carry out its contracts, collect its accounts receivable, and liquidate its assets and apply the same in discharge of the obligations of the corporation and, after paying such obligations, each share according to the amount paid in thereon, shall be entitled to its proportion of the balance of the assets. Said corporation shall continue in existence for the purpose of discharging its debts and obligations, collecting and distributing its assets, and doing all other acts required in order to wind up its business, and may sue and be sued for the purpose of enforcing such debts and obligations until its affairs are fully adjusted and wound up, for three (3) years.

SOURCES: Codes, 1930, § 4259; 1942, § 5420; Laws, 1924, ch. 177; reenacted without change, Laws, 1982, ch. 304, § 32; Laws, 1987, ch. 381, § 19; reenacted, Laws, 1995, ch. 374, § 31; reenacted without change, Laws, 1997, ch. 368, § 29; reenacted without change, Laws, 2001, ch. 408, § 29, eff from and after July 1, 2001.

Cross References — Merger of credit unions, see § 81-13-79.

RESEARCH REFERENCES

Am Jur. 7 Am. Jur. Legal Forms 2d, Credit Unions §§ 79:91, 79:92 (shareholders' resolution, or consent to recommendation of directors-election to dissolve credit union).

§ 81-13-60. Establishment of branch office.

(1) Any state credit union may apply to the Commissioner of Banking and Consumer Finance for permission to establish a branch office. The application shall be in such a form as may be prescribed by the commissioner and shall be approved or denied by the commissioner within one hundred twenty (120) days of filing.

(2) The commissioner shall approve a branch application when all of the following criteria are met:

(a) The applicant has an examination rating of two (2) or higher;

(b) The applicant has capital ratios equal or exceeding the amount required by the insurer of deposit accounts;

(c) The applicant has no formal or informal enforcement actions outstanding; and

(d) The applicant has demonstrated that its members would be well served by the branch.

(3) If the commissioner denies the branch application, the branch applicant will have the right of a hearing as prescribed in Section 81-13-1 for those applicants denied a new credit union.

SOURCES: Laws, 1997, ch. 330, § 4; reenacted without change, Laws, 2001, ch. 408, § 30, eff from and after July 1, 2001.

RESEARCH REFERENCES

ALR. What is a "branch bank" within statutes regulating the establishment of branch banks. 23 A.L.R.3d 683.

§ 81-13-61. Change of place of business.

A credit union may change its place of business upon written approval from the Department of Banking and Consumer Finance.

SOURCES: Codes, 1930, § 4260; 1942, § 5421; Laws, 1924, ch. 177; reenacted without change Laws, 1982, ch. 304, § 33; Laws, 1987, ch. 381, § 20; reenacted and amended, Laws, 1995, ch. 374, § 32; reenacted without change, Laws, 1997, ch. 368, § 30; reenacted without change, Laws, 2001, ch. 408, § 31, eff from and after July 1, 2001.

Cross References — Merger of credit unions, see § 81-13-79.

§ 81-13-62. Electronic banking terminals.

(1) For the purposes of this section, the following words shall have the meanings provided in this subsection unless the context otherwise requires:

(a) "Electronic terminal" means an unmanned electronic device owned or operated by a federally insured credit union through which a consumer may initiate an electronic fund transfer.

(b) "Electronic fund transfer" means any of the following:

(i) The withdrawal of cash from or the deposit of cash or checks into an unmanned electronic device, such as an automatic teller machine, but not including night depositories;

(ii) An application for or acceptance of a loan through use of an unmanned electronic device;

(iii) The transfer of funds between accounts through use of an unmanned electronic device; or

(iv) The issuance of a check by an unmanned electronic device.

(2) Any state credit union may apply to the Commissioner of Banking and Consumer Finance for permission to establish electronic terminals. The application shall be in such a form as may be prescribed by the commissioner. The commissioner shall approve the electronic terminal when all of the following criteria are met:

(a) The applicant has an examination rating of two (2) or higher;

(b) The applicant has capital ratios equal or exceeding the amount required by the insurer of deposit accounts;

(c) The applicant has no formal or informal enforcement actions outstanding; and

(d) The applicant has demonstrated that its members would be well served by the electronic terminal.

(3) For the use of its electronic terminals connected to sharing networks or systems, a credit union may impose a fee if imposition of the fee is disclosed

at a time and in a manner that allows a user to terminate or cancel the transaction without incurring the transaction fee. Such fee shall not exceed Two Dollars ($2.00) or four percent (4%) of the gross amount of the transaction, whichever is greater. An agreement to share electronic terminals shall not prohibit, limit or restrict the right of a credit union to charge such fees for the use of its electronic terminals as allowed by state or federal law, or require a credit union to limit or waive its rights or obligations under this section.

SOURCES: Laws, 1997, ch. 330, § 5; reenacted without change, Laws, 2001, ch. 408, § 32, eff from and after July 1, 2001.

§ 81-13-63. Taxation.

The credit unions organized hereunder, their property, their franchises, capital, reserves, surpluses, and other funds, and their income shall be exempt from all taxation now or hereafter imposed; except that any real property and any tangible personal property of such credit unions shall be subject to federal, state, county, municipal or other local taxation to the same extent as other similar property is taxed. Nothing herein contained shall prevent holdings in any credit union organized hereunder from being included in the valuation of the personal property of the owners or holders thereof in assessing taxes imposed by authority of the state or political subdivision thereof in which the credit union is located; but the duty or burden of collecting or enforcing the payment of such a tax shall not be imposed upon any such credit union and the tax shall not exceed the rate of taxes imposed upon holdings in federal credit unions.

SOURCES: Codes, 1930, § 4261; 1942, § 5422; Laws, 1924, ch. 177; Laws, 1960, ch. 185, § 1; reenacted without change, Laws, 1982, ch. 304, § 34; reenacted, Laws, 1995, ch. 374, § 33; reenacted without change, Laws, 1997, ch. 368, § 31; reenacted without change, Laws, 2001, ch. 408, § 33, eff from and after July 1, 2001.

JUDICIAL DECISIONS

1. In general.

The exemption of credit unions paying a privilege tax from all other taxation does not embrace contributions to the unemployment insurance fund. Mutual Credit Union v. Mississippi Emp. Sec. Comm'n, 241 Miss. 432, 131 So. 2d 444 (1961).

§ 81-13-65. Conversion from state to federal credit union and from federal to state credit union.

(1) A state credit union may be converted into a federal credit union by complying with the following requirements:

(a) The proposition for such conversion shall first be approved, and a date set for a vote thereon by the members, either at a regular meeting or a special meeting called for that purpose by a majority of the directors of the state credit union. Written notice of the proposition and of the date set for the vote shall be delivered or mailed to each member, not more than thirty (30) days nor less than seven (7) days prior to such date. Approval of the proposition for conversion shall be by the affirmative vote of a majority of the members attending said meeting.

(b) A statement of the results of the vote, verified by the affidavits of the president or vice president and the secretary, shall be filed with the Commissioner of Banking and Consumer Finance within ten (10) days after the vote is taken.

(c) Promptly after the vote is taken and in no event later than ninety (90) days thereafter, if the proposition for conversion was approved by such vote, the credit union shall take such action as may be necessary under the Federal Credit Union Act to make it a federal credit union, and within ten (10) days after receipt of the federal credit union charter there shall be filed with the commissioner a copy of the charter thus issued. Upon such filing the credit union shall cease to be a state credit union.

(d) Upon ceasing to be a state credit union, such credit union shall no longer be subject to any of the provisions of this chapter. The successor federal credit union shall be vested with all of the assets and shall continue to be responsible for all of the obligations of the state credit union to the same extent as though the conversion had not taken place.

(2)(a) A federal credit union, organized under the Federal Credit Union Act, may be converted into a state credit union by:

(i) Complying with all federal requirements requisite to enabling it to convert to a state credit union or cease being a federal credit union;

(ii) Filing with the commissioner proof of such compliance, satisfactory to the commissioner;

(iii) Filing with the Department of Banking and Consumer Finance the articles of incorporation required for state credit unions; and

(iv) Filing such other statements or proof as may from time to time be required by the commissioner.

(b) Should the commissioner determine that an audit should be made of the credit union prior to approval, he shall direct such audit and the reasonable, actual cost thereof shall be paid by the credit union.

(c) When the commissioner has been satisfied that all of such requirements have been complied with, the commissioner shall approve the charter of incorporation. Upon such approval the federal credit union shall become a state credit union as of the date it ceases to be a federal credit union. The state credit union shall be vested with all of the assets and shall continue to be responsible for all of the obligations of the federal credit union to the same extent as though the conversion had not taken place.

SOURCES: Codes, 1930, § 4262; 1942, § 5423; Laws, 1924, ch. 177; Laws, 1960, ch. 185, § 2; Laws, 1979, ch. 307, § 10; reenacted, Laws, 1982, ch. 304, § 35; Laws, 1987, ch. 381, § 21; Laws, 1995, ch. 374, § 34; reenacted without change, Laws, 1997, ch. 368, § 32; reenacted without change, Laws, 2001, ch. 408, § 34, eff from and after July 1, 2001.

Cross References — Merger of credit unions, see § 81-13-79.
Federal Aspects — Federal Credit Union Act, see 12 USCS § 1751 et seq.

§ 81-13-67. Repealed.

Repealed by Laws of 1987, ch 381, § 25 eff from and after July 1, 1987.

[Codes, 1930, § 4263; 1942, § 5424; Laws, 1924, ch. 177; Laws, 1979, ch. 307, § 11; reenacted, Laws, 1982, ch. 304, § 36]

Editor's Note — Former § 81-13-67 related to amendment of articles of association.

§ 81-13-69. Method of voting by members; special meetings; number of votes per member; proxies; matters subject to vote.

(1) The bylaws may provide for the taking of referendum votes by the membership upon questions coming before the membership; such voting to be by mail, or otherwise in writing or a combination of viva voce voting and writing.

(2) Special meetings of the members may be held by order of the board of directors or the supervisory committee, and shall be held on request of ten percent (10%) of the members. At all meetings a member shall have but one (1) vote, irrespective of the number of shares held. No shareholder may vote by proxy, but a society, association, copartnership or corporation having membership in the credit union may be represented and voted by one (1) person duly authorized by such society, association, copartnership or corporation to represent it. Provided that the notice of the meeting has stated the question to be considered, the members may decide on any matter of interest to the corporation, may overrule the directors by a three-fourths (¾) vote of those present, and may amend the bylaws.

SOURCES: Codes, 1930, § 4264; 1942, § 5425; Laws, 1924, ch. 177; reenacted without change, Laws, 1982, ch. 304, § 37; Laws, 1987, ch. 381, § 22; reenacted and amended, Laws, 1995, ch. 374, § 35; reenacted without change, Laws, 1997, ch. 368, § 33; reenacted without change, Laws, 2001, ch. 408, § 35, eff from and after July 1, 2001.

§ 81-13-71. Penal laws applicable.

The making of a wilfully false affidavit to any statement, report or other document required by law in connection with the establishment or operating of a credit union shall be perjury and punishable as such, according to the general laws of the state and the embezzlement of any of the funds, securities or other property of a credit union, shall be punishable as such according to the general laws.

SOURCES: Codes, 1930, § 4265; 1942, § 5426; Laws, 1924, ch. 177; reenacted without change, Laws, 1982, ch. 304, § 38; reenacted, Laws, 1995, ch. 374,

§ 36; reenacted without change, Laws, 1997, ch. 368, § 34; reenacted without change, Laws, 2001, ch. 408, § 36, eff from and after July 1, 2001.

Cross References — Embezzlement, see §§ 97-23-19 et seq.

§ 81-13-73. Record keeping.

Each credit union shall keep sufficient books and accounts in such form as shall be approved by the Commissioner of Banking and Consumer Finance in accordance with the NCUA guidelines. However, any state credit union may cause any or all records, books and accounts at any time in its custody to be reproduced in a format of storage commonly used, whether electronic, imaged, magnetic, microphotographic, or otherwise, and any reproduction so made shall have the same force and effect as the original thereof and be admitted in evidence equally with the original.

SOURCES: Codes, 1930, § 4266; 1942, § 5427; Laws, 1924, ch. 177; reenacted without change, Laws, 1982, ch. 304, § 39; Laws, 1987, ch. 381, § 23; reenacted and amended, Laws, 1995, ch. 374, § 37; reenacted without change, Laws, 1997, ch. 368, § 35; Laws, 2000, ch. 335, § 3; reenacted without change, Laws, 2001, ch. 408, § 37, eff from and after July 1, 2001.

Cross References — Record keeping — banks, see § 81-5-7.
Record keeping — savings associations, see § 81-12-95.
Record keeping — savings banks, see § 81-14-153.

§ 81-13-75. Conflicting laws repealed.

All laws or parts of laws which otherwise would be in conflict with the provisions of this chapter are to be construed so as not to apply to credit unions to the extent that they would conflict with this chapter but nothing herein shall be taken as repealing any law of the state affecting or regulating the receiving of deposits, the making of loans, the issuance of shares or securities, or the lending of money, or the charging or receiving of interest, except so far as the same applies to and may be involved in or related to the establishment and operating of credit unions.

SOURCES: Codes, 1930, § 4267; 1942, § 5428; Laws, 1924, ch. 177; reenacted without change, 1982, ch. 304, § 40; reenacted, 1995, ch. 374, § 38; reenacted without change, Laws, 1997, ch. 368, § 36; reenacted without change, Laws, 2001, ch. 408, § 38, eff from and after July 1, 2001.

§ 81-13-77. Repealed.

Repealed by Laws of 2001, ch. 408, § 39, eff from and after July 1, 2001.

[Laws, 1979, ch. 301, § 51; Laws, 1982, ch. 304, § 41; Laws, 1987, ch. 381, § 24; Laws, 1990, ch. 446, § 1; Laws, 1995, ch. 374, § 39; reenacted and amended, Laws, 1997, ch. 368, § 37, eff from and after July 1, 1997.]

Editor's Note — Former § 81-13-77 provided for the repeal of §§ 81-13-1 through 81-13-81.

§ 81-13-79. Merger of credit unions; certificate of merger; transfer of rights, assets and interests.

(1) Any credit union may, with the approval of the Commissioner of Banking and Consumer Finance or his successor, merge with another credit union under the existing charter of the other credit union, pursuant to any plan agreed upon by the majority of each board of directors of each credit union joining in the merger, and approved by the affirmative vote of a majority of the members of the merging credit union present at a meeting of its members duly called for such purpose, and consented to by any government agency or other organization insuring the accounts of the credit union. Provided, however, such merger shall not be in violation of the provision of Section 81-13-13, which requires a common bond of occupation, association or residence within groups which are members of a credit union.

(2) After agreement by the directors and approval by the members of the merging credit union, the president and secretary of the credit union shall execute a certificate of merger, which shall set forth all of the following:

(a) The time and place of the meeting of the board of directors at which the plan was agreed upon;

(b) The vote in favor of the adoption of the plan;

(c) A copy of the resolution or other action by which the plan was agreed upon;

(d) The time and place of the meeting of the members at which the plan agreed upon was approved; and

(e) The vote by which the plan was approved by the members.

(3) Such certificate and a copy of the plan of merger agreed upon shall be forwarded to the Commissioner of Banking and Consumer Finance or his successor, certified by him, and returned to both credit unions within thirty (30) days.

(4) Upon return of the certificate from the commissioner or his successor, all property, property rights and members' interest of the merged credit union shall vest in the surviving credit union without deed, endorsement or other instrument of transfer, and all debts, obligations and liabilities of the merged credit union shall be deemed to have been assumed by the surviving credit union under whose charter the merger was effected. The rights and privileges of the members of the merged credit union shall remain intact.

(5) This section shall be construed, whenever possible, to permit a credit union chartered under any other law to merge with one chartered under Section 81-13-1 et seq., or to permit one chartered under Section 81-13-1 et seq. to merge with one chartered under any other law.

SOURCES: Laws, 1980, ch. 526; reenacted, Laws, 1995, ch. 374, § 40; reenacted without change, Laws, 1997, ch. 368, § 38; reenacted without change, Laws, 2001, ch. 408, § 40, eff from and after July 1, 2001.

Cross References — Insurance of accounts by the National Credit Union Administration, see § 81-13-4.

Voluntary dissolution of credit union, see § 81-13-59.

Change of place of business of credit union, see § 81-13-61.

Conversion from state to federal credit union or from federal to state credit union, see § 81-13-65.

§ 81-13-81. Approval of foreign credit unions.

(1) No credit union, except credit unions organized under the laws of the United States or under this chapter, shall do business in this state until it has received approval from the Commissioner of the Department of Banking and Consumer Finance.

(2) The commissioner may approve the operation of such a credit union in this state after finding that:

(a) The field of membership to be served by such credit union is not now being adequately served;

(b) There is a need for such credit union to conduct business in the state to adequately serve its members and not merely to solicit new membership;

(c) The credit union is financially solvent;

(d) The credit union's accounts are insured by the National Credit Union Administration or its successor; and

(e) The credit union has executed an agreement with the commissioner to:

(i) Submit a copy of its annual regulatory examination report;

(ii) Designate a resident agent;

(iii) Inform members that it is not regulated, insured or supervised by the State of Mississippi; and

(iv) Agree to fully comply with the provisions of the Mississippi credit union laws, rules and regulations.

(3) The commissioner may prohibit any such credit union from doing business within the state, or disapprove an application, or suspend or revoke one previously issued, if he finds the credit union not conforming to Mississippi credit union laws, rules and regulations, or finds that twenty-five percent (25%) or more of the credit union's members are, or are expected to be residents of Mississippi.

SOURCES: Laws, 1988, ch. 352, § 1; reenacted and amended, Laws, 1995, ch. 374, § 41; reenacted without change, Laws, 1997, ch. 368, § 39; reenacted without change, Laws, 2001, ch. 408, § 41, eff from and after July 1, 2001.

CHAPTER 14

Savings Bank Law

Article 1.	General Provisions	81-14-1
Article 2.	Incorporation and Organization	81-14-51
Article 3.	Corporate Changes	81-14-101
Article 4.	Supervision	81-14-151
Article 5.	Enforcement	81-14-201
Article 6.	Corporate Administration	81-14-251
Article 7.	Loans and Investments	81-14-301
Article 8.	Operations	81-14-351
Article 9.	Holding Companies	81-14-401
Article 10.	Repeal of Chapter	81-14-501

ARTICLE 1.

GENERAL PROVISIONS.

SEC.
81-14-1. Short title.
81-14-3. Purpose.
81-14-5. Applicability of chapter.
81-14-7. Definitions and application of terms.

§ 81-14-1. Short title.

This chapter shall be known and may be cited as the "Savings Bank Law."

SOURCES: Laws, 1992, ch. 489, § 1; reenacted without change, Laws, 1997, ch. 364, § 1; reenacted without change, Laws, 2001, ch. 457, § 1, eff from and after July 1, 2001.

Editor's Note — Laws of 1992, ch. 489, which created the Savings Bank Law, also amended several code sections in Chapter 12 of Title 81. For a complete list of code sections affected by Laws of 1992, ch. 489, see the Statutory Tables Volume, Table B.

For repeal date of this section, see § 81-14-501.

Cross References — Savings Association Law, see §§ 81-12-1 et seq.

Companies authorized to act as fiduciaries, see § 81-27-1.101.

RESEARCH REFERENCES

Am Jur. 10 Am. Jur. 2d, Banks and Financial Institutions §§ 1, 2, 3, 13, 14, 19-23.

§ 81-14-3. Purpose.

The purpose of this chapter is:

(a) To provide for affordable housing resources for citizens of this state by promoting and preserving a system of thrift institutions that are locally owned and controlled;

(b) To provide for the safe and sound conduct of the business of savings banks, the conservation of their assets and the maintenance of public confidence in savings banks;

(c) To provide for the protection of the interests of customers and members;

(d) To provide the opportunity for savings banks to remain competitive with each other and with other depository institutions existing under other state and federal laws;

(e) To provide for an increase in the savings base of the state and for local control of the means of finance and accumulation of capital;

(f) To provide the opportunity for the management of savings banks to exercise prudent business judgment in conducting the affairs of savings banks to the extent compatible with the purposes recited in this section; and

(g) To provide adequate rule making power and administrative discretion so that the regulation and supervision of savings banks are readily responsive to changes in local economic conditions and depository institution practices.

SOURCES: Laws, 1992, ch. 489, § 2; reenacted without change, Laws, 1997, ch. 364, § 2; reenacted without change, Laws, 2001, ch. 457, § 2, eff from and after July 1, 2001.

Amendment Notes — The 2001 amendment reenacted the section without change.

§ 81-14-5. Applicability of chapter.

The provisions of this chapter, unless the context otherwise specifies, shall apply to all state savings banks.

SOURCES: Laws, 1992, ch. 489, § 3; reenacted without change, Laws, 1997, ch. 364, § 3; reenacted without change, Laws, 2001, ch. 457, § 3, eff from and after July 1, 2001.

Amendment Notes — The 2001 amendment reenacted the section without change.

§ 81-14-7. Definitions and application of terms.

As used in this chapter, unless the context otherwise requires, the following terms shall have the meanings ascribed herein:

(a) "Affiliate" means any person or corporation which controls, is controlled by, or is under common control with a savings institution.

(b) "Associate" when used to indicate a relationship with any person means (i) any corporation or organization, other than the applicant, of which such person is an officer or partner or is, directly or indirectly, the beneficial owner of ten percent (10%) or more of any class of equity securities; (ii) any trust or other estate in which such person has a substantial beneficial interest, or to which such person serves as a trustee or in a similar fiduciary capacity; and (iii) any relative or spouse who lives in the same house as that person, or any relative of that person's spouse who lives in the same house as that person, or who is a director or officer of the applicant or any of its parents or subsidiaries.

(c) "Association" means a thrift institution that is chartered by this state but which is not subject to this chapter.

(d) "Board" means the State Board of Banking Review.

(e) "Branch office" means an office of a savings bank other than its principal office which renders savings institution services.

(f) "Capital stock" means securities which represent ownership of a stock savings bank.

(g) "Certificate of incorporation of charter" means the document which represents the corporate existence of a state savings bank.

(h) "Commissioner" means the Commissioner of Banking and Consumer Finance.

(i) "Conflict of interest" means a matter before the board of directors in which one or more of the directors, officers or employees has a direct or indirect financial interest in its outcome.

(j) "Control" means the power, directly or indirectly, to direct the management or policies of a savings bank, or to vote twenty-five percent (25%) or more of any class of voting securities for a savings bank.

(k) "Depository institution" means a person, firm or corporation engaged in the business of receiving, soliciting or accepting money or its equivalent on deposit and/or lending money or its equivalent.

(*l*) "Disinterested directors" means those directors who have absolutely no direct or indirect financial interest in the matter before them.

(m) "Dividends on stock" means the earnings of a savings bank paid out to holders of capital stock in a stock savings bank.

(n) "Department" means the Department of Banking and Consumer Finance.

(o) "Examination and investigation" means a supervisory inspection of a savings bank or proposed savings bank which may include inspection of every relevant piece of information including subsidiary or affiliated businesses.

(p) "Immediate family" means one's spouse, father, mother, children, brothers, sisters and grandchildren; and the father, mother, brother and sisters of one's spouse; and the spouse of one's child, brother or sister.

(q) "Insurance of deposit accounts" means insurance on a savings bank's deposit accounts when the beneficiary is the holder of such insured account.

(r) "Loan production office" means an office of a savings bank other than the principal or branch offices whose activities are limited to the generation of loans.

(s) "Members" means deposit account holders and borrowers in a state mutual savings bank.

(t) "Mutual savings bank" means a savings bank owned by members of the savings bank and organized under the provisions of this chapter.

(u) "Net worth" means a savings bank's total assets less total liabilities as defined by generally accepted accounting principles plus unallocated, general loan loss reserves.

(v) "Original incorporators" means the organizers of a state savings bank responsible for the business of a proposed savings bank from filing of application to the board's final decision on such application.

(w) "Plan of conversion" means a detailed outline of the procedure of the conversion of a savings institution from one to another regulatory authority, from one to another form of ownership, or from one to another charter.

(x) "Principal office" means the office which houses the headquarters of a savings bank.

(y) "Proposed savings bank" means an entity in organizational procedures prior to the board's final decision on its charter application.

(z) "Registered agent" means the person named in the certificate of incorporation upon whom service of legal process shall be deemed binding upon the savings bank.

(aa) "Savings bank" includes a state savings bank or a federal savings bank unless limited by use of the words "state" or "federal."

(bb) "Savings institution" means either an association or a savings bank.

(cc) "Service corporation" means a corporation operating under the provision of Article 7 of this chapter which engages in activities determined by the rules and regulations of the commissioner to be incidental to the conduct of a depository institution business as provided in this chapter or activities which further the corporate purposes of a savings bank, or which furnishes services to a savings bank or subsidiaries of a savings bank, the voting stock of which is owned directly or indirectly by one or more savings institutions.

(dd) "This state" means the State of Mississippi.

(ee) "Thrift institution" means a savings bank, bank for savings, savings and loan association, savings association, building and loan association, homestead association and any other supervised savings and residential financing institution of a substantially similar nature, but shall not include a commercial banking institution organized under the laws of the United States or a commercial bank organized under the laws of this or any other state.

(ff) "State savings bank" means a depository institution organized under this chapter and operated under the provisions of this chapter; or a corporation organized under the provisions of the laws of this state or federal law and so converted as to be operated under the provisions of this chapter.

(gg) "Stock savings bank" means all savings banks owned by holders of capital stock and organized and/or operated under the provisions of this chapter.

(hh) "Voluntary dissolution" means the dissolution and liquidation of a savings bank initiated by its ownership.

SOURCES: Laws, 1992, ch. 489, § 4; Laws, 1994, ch. 622, § 142; reenacted without change, Laws, 1997, ch. 364, § 4; reenacted without change, Laws, 2001, ch. 457, § 4, eff from and after July 1, 2001.

Amendment Notes — The 2001 amendment reenacted the section without change.

Cross References — Department of Savings Institutions and Commissioner of Savings Institutions, see § 81-12-11.

ARTICLE 2.

INCORPORATION AND ORGANIZATION.

SEC.

81-14-51. Hearings.
81-14-53. Application of chapter on business corporations.
81-14-55. Scope and prohibitions; existing charters; injunctions.
81-14-57. Application to organize savings bank.
81-14-59. Certificate of incorporation.
81-14-61. Commissioner to consider application.
81-14-63. Criteria to be met before commissioner may recommend approval of application.
81-14-65. Board to review findings and recommendations of commissioner.
81-14-67. Grounds for approval or denial of application.
81-14-69. Appeal.
81-14-71. Insurance of accounts required.
81-14-73. Status as IRS qualified thrift institution.
81-14-75. Time allowed to commence business.
81-14-77. Licensing.
81-14-79. Amendments to certificate of incorporation.
81-14-81. List of stockholders to be maintained.
81-14-83. Branch offices.
81-14-85. Request to change location of branch or principal office.
81-14-87. Approval revoked; branch office.
81-14-89. Branch offices closed.
81-14-91. Loan production office.

§ 81-14-51. Hearings.

Any hearing required to be held by this chapter shall be conducted in accordance with applicable provisions as prescribed by the commissioner.

SOURCES: Laws, 1992, ch. 489, § 5; reenacted without change, Laws, 1997, ch. 364, § 5; reenacted without change, Laws, 2001, ch. 457, § 5, eff from and after July 1, 2001.

Amendment Notes — The 2001 amendment reenacted the section without change.

Cross References — This article not to apply to applications for permission to organize interim state savings bank, see § 81-14-129.

§ 81-14-53. Application of chapter on business corporations.

All the provisions of law relating to private corporations operating in this state which are not inconsistent with this chapter, or with the proper business of depository institutions, shall be applicable to all state savings banks.

SOURCES: Laws, 1992, ch. 489, § 6; reenacted without change, Laws, 1997, ch. 364, § 6; reenacted without change, Laws, 2001, ch. 457, § 6, eff from and after July 1, 2001.

Amendment Notes — The 2001 amendment reenacted the section without change.

§ 81-14-55. Scope and prohibitions; existing charters; injunctions.

(1) Nothing in this chapter shall be construed to invalidate any charter that was valid prior to the enactment of this chapter. Any savings bank chartered pursuant to this chapter shall use the letters "SSB" in its legal name.

(2) Except as provided in subsection (1), no person or group of persons, nor any corporation, company or savings bank that is not incorporated and licensed in accordance with the provisions of this chapter or federal law to operate a savings bank shall operate as a savings bank. Unless so authorized as a state or federal savings bank and engaged in transacting a depository institution business, no person or group of persons, nor any corporation, company or savings bank domiciled and doing business in this state shall:

(a) Use in its name the term "savings bank" or words of similar import or connotation that lead the public reasonably to believe that the business so conducted is that of a savings bank; or

(b) Use any sign, or circulate or use any letterhead, billhead, circular or paper whatsoever, or advertise or communicate in any manner, that would lead the public reasonably to believe that it is conducting the business of a savings bank.

(3) Upon application by the commissioner or by any savings bank, a court of competent jurisdiction may issue an injunction to restrain any person or entity from violating any of the foregoing provisions of subsection (2).

SOURCES: Laws, 1992, ch. 489, § 7; reenacted without change, Laws, 1997, ch. 364, § 7; reenacted without change, Laws, 2001, ch. 457, § 7, eff from and after July 1, 2001.

Amendment Notes — The 2001 amendment reenacted the section without change.

Cross References — This article not to apply to applications for permission to organize interim state savings bank, see § 81-14-129.

§ 81-14-57. Application to organize savings bank.

(1) Any five (5) or more natural persons (hereinafter referred to as "incorporators"), a majority of whom shall be domiciled in this state, may make application to organize a savings bank in order to promote the purpose of this chapter. The incorporators shall file with the commissioner a preliminary application to organize a state savings bank in the form to be prescribed by the commissioner, together with the proper nonrefundable application fee.

(2) The application to organize a state savings bank shall be received by the commissioner not less than sixty (60) days prior to the scheduled consideration of the application by the board, and it shall contain:

(a) The original and two (2) copies of the certificate of incorporation, signed by a majority of the original incorporators, which shall not be less than five (5), and properly acknowledged by a person duly authorized by this state to take proof of acknowledgment of deeds;

(b) The names and addresses of the incorporators and the initial members of the board of directors;

(c) Statements of the anticipated receipts, expenditures, earnings and financial condition of the savings bank for its first three (3) years of operation, or such longer period as the commissioner may require;

(d) A showing satisfactory to the board that:

(i) The public convenience and advantage will be served by the establishment of the proposed savings bank;

(ii) There is a reasonable demand and necessity in the community which will be served by the establishment of the proposed savings bank;

(iii) The proposed savings bank will have a reasonable probability of sustaining profitable and beneficial operations within a reasonable time in the community in which the proposed savings bank intends to locate;

(iv) The proposed savings bank will promote healthy and effective competition in the community by the delivery to the public of savings institution services;

(e) The proposed bylaws;

(f) Statements, exhibits, maps and other data which may be prescribed or required by the commissioner, which data shall be sufficiently detailed so as to enable the commissioner to pass upon the criteria set forth in this article.

(3) The application shall be signed by a majority of the original incorporators, which shall not be less than five (5), and shall be properly acknowledged by a person duly authorized by this state to take proof and acknowledgment of deeds.

SOURCES: Laws, 1992, ch. 489, § 8; reenacted without change, Laws, 1997, ch. 364, § 8; reenacted without change, Laws, 2001, ch. 457, § 8, eff from and after July 1, 2001.

Amendment Notes — The 2001 amendment reenacted the section without change.

Cross References — This article not to apply to applications for permission to organize interim state savings bank, see § 81-14-129.

RESEARCH REFERENCES

Am Jur. 10 Am. Jur. 2d, Banks and Financial Institutions §§ 109 et seq., 176 et seq.

§ 81-14-59. Certificate of incorporation.

(1) The certificate of incorporation of a proposed mutual savings bank shall set forth:

(a) The name of the savings bank which shall not closely resemble the name of an existing depository institution doing business under the laws of this state so as to mislead the public;

(b) The county and city or town where its principal office will be located in this state; and the name of its registered agent and the address of its registered office, including county and city or town, and street and number;

(c) The period of duration, which may be perpetual. When the certificate of incorporation fails to state the period of duration, it shall be considered perpetual;

(d) The purpose for which the savings bank is organized which shall be limited to purposes permitted under the laws of this state for savings banks;

(e) The amount of the entrance fee per deposit account based upon the amount pledged;

(f) The minimum amount on deposit in deposit accounts before it shall commence business;

(g) Any provision, not inconsistent with this chapter, and the proper operation of a savings bank, which the incorporators shall set forth in the certificate of incorporation for the regulation of the internal affairs of the savings bank;

(h) The number of directors, which shall not be less than five (5), constituting the initial board of directors (which may be classified in the certificate of incorporation) and the name and address of each person who is to serve as a director until the first meeting of members, or until his successor is duly elected;

(i) The names and addresses of the incorporators.

(2) The certificate of incorporation of a proposed stock savings bank shall set forth:

(a) The name of the savings bank which shall not closely resemble the name of an existing depository institution doing business under the laws of this state so as to mislead the public;

(b) The county and city or town where its principal office will be located in this state; and the name of its registered agent and the address of its registered office, including county and city or town, and street and number;

(c) The period of duration which may be perpetual. When the certificate of incorporation fails to state the period of duration, it shall be considered perpetual;

(d) The purposes for which the savings bank is organized, which shall be limited to purposes permitted under the laws of this state for savings banks;

(e) With respect to the shares of stock which the savings bank shall have authority to issue:

(i) If the stock is to have a par value, the number of such shares of stock and the par value of each;

(ii) If the stock is to be without par value, the number of such shares of stock;

(iii) If the stock is to be divided into classes, or into series within a class of preferred or special shares of stock, the certificate of incorporation shall also set forth a designation of each class, with a designation of each series within a class, and a statement of the preferences, limitations and relative rights of the stock of each class or series;

(f) The minimum amount of consideration to be received for its shares of stock before it shall commence business;

(g) A statement as to whether stockholders have preemptive rights to acquire additional or treasury shares of the savings bank;

(h) Any provision not inconsistent with this chapter or the proper operation of a savings bank, which the incorporators shall set forth in the certificate of incorporation for the regulation of the internal affairs of the savings bank;

(i) The number of directors, which shall not be less than five (5), constituting the initial board of directors (which may be classified in accordance with provisions in the certificate of incorporation) and the name and address of each person who is to serve as a director until the first meeting of the stockholders, or until his successor is duly elected;

(j) The names and addresses of the incorporators.

SOURCES: Laws, 1992, ch. 489, § 9; reenacted without change, Laws, 1997, ch. 364, § 9; reenacted without change, Laws, 2001, ch. 457, § 9, eff from and after July 1, 2001.

Amendment Notes — The 2001 amendment reenacted the section without change.

RESEARCH REFERENCES

Am Jur. 10 Am. Jur. 2d, Banks and Financial Institutions §§ 109 et seq., 176 et seq.

§ 81-14-61. Commissioner to consider application.

Upon receipt of an application to organize and establish a savings bank, the commissioner shall examine or cause to be examined all the relevant facts connected with the formation of the proposed savings bank. If it appears to the commissioner that the proposed savings bank has complied with all the requirements set forth in this chapter and the rules and regulations for the formation of a savings bank and is otherwise lawfully entitled to be organized and established as a savings bank, the commissioner shall present the application to the board for its consideration.

SOURCES: Laws, 1992, ch. 489, § 10; reenacted without change, Laws, 1997, ch. 364, § 10; reenacted without change, Laws, 2001, ch. 457, § 10, eff from and after July 1, 2001.

Amendment Notes — The 2001 amendment reenacted the section without change.

RESEARCH REFERENCES

Am Jur. 10 Am. Jur. 2d, Banks and Financial Institutions §§ 19 et seq.

§ 81-14-63. Criteria to be met before commissioner may recommend approval of application.

(1) The commissioner may recommend approval of an application to form a mutual savings bank only when all of the following criteria are met:

(a) The proposed savings bank has an operational expense fund from which to pay organizational and incorporation expenses in an amount determined by the commissioner to be sufficient for the safe and proper operation of the savings bank; provided, however, that such expense fund shall not contain less than Seventy-five Thousand Dollars ($75,000.00). The monies remaining in such expense fund shall be held by the savings bank for at least one (1) year from its date of licensing. No portion of such fund shall be released to an incorporator or director who contributed to it, nor to any other contributor, nor to any other person, and no dividends shall be accrued or paid on such funds without the prior approval of the commissioner.

(b) The proposed savings bank has pledges for deposit accounts in the amount determined by the commissioner sufficient for the safe and proper operation of the savings bank. However, the amount of such pledges for any savings bank, except for a savings bank which was converted from an existing financial institution, shall not be less than the amount required to obtain insurance of deposit accounts by the Federal Deposit Insurance Corporation.

(c) All entrance fees for deposit accounts of the proposed savings bank have been made with legal tender of the United States.

(d) The name of the proposed savings bank will not mislead the public and is not the same as, or so similar to, the name of an existing depository institution as to mislead the public.

(e) The character, general fitness and responsibility of the incorporators and the initial board of directors of the proposed savings bank, a majority of whom shall be residents of Mississippi, command the confidence of the community in which the proposed savings bank intends to locate.

(f) There is a reasonable demand and necessity in the community which will be served by the establishment of the proposed savings bank.

(g) The public convenience and advantage will be served by the establishment of the proposed savings bank.

(h) The proposed savings bank will have a reasonable probability of sustaining profitable and beneficial operations in the community.

(i) The proposed savings bank, if established, will promote the healthy and effective competition in the community by the delivery to the public of savings institution services.

(2) The commissioner may recommend approval of an application to form a stock savings bank only when all the following criteria are met:

(a) The proposed savings bank has prepared a plan to solicit subscriptions for capital stock in an amount determined by the commissioner to be sufficient for the safe and proper operation of the savings bank. However, the amount of such subscriptions for any savings bank, except for a savings bank which was converted from an existing financial institution, shall not be less than the amount required to obtain insurance of deposit accounts by the Federal Deposit Insurance Corporation.

(b) The name of the proposed savings bank will not mislead the public and is not the same as, or so similar to, the name of an existing depository institution as to mislead the public.

(c) The character, general fitness and responsibility of the incorporators, initial board of directors and initial stockholders of the proposed savings bank command the confidence of the community in which the proposed institution intends to locate.

(d) There is a reasonable demand and necessity in the community which will be served by the establishment of the proposed savings bank.

(e) The public convenience and advantage will be served by the establishment of the proposed savings bank.

(f) The proposed savings bank will have a reasonable probability of sustaining profitable and beneficial operations in the community.

(g) The proposed savings bank, if established, will promote healthy and effective competition in the community in the delivery to the public of savings institution services.

SOURCES: Laws, 1992, ch. 489, § 11; reenacted without change, Laws, 1997, ch. 364, § 11; reenacted without change, Laws, 2001, ch. 457, § 11, eff from and after July 1, 2001.

Amendment Notes — The 2001 amendment reenacted the section without change.

RESEARCH REFERENCES

Am Jur. 10 Am. Jur. 2d, Banks and Financial Institutions §§ 109 et seq., 176 et seq.

§ 81-14-65. Board to review findings and recommendations of commissioner.

(1) If the commissioner does not have the completed application within one hundred twenty (120) days of the filing of the preliminary application, the application shall be returned to the applicants.

(2) When the commissioner has completed his examination and investigation of the facts relevant to the establishment of the proposed savings bank, he shall present his findings and recommendations to the board at a public hearing. The board must approve or reject an application within one hundred eighty (180) days of the submission of the preliminary application.

(3) Not less than forty-five (45) days prior to the public hearing held for the consideration of the application to establish a savings bank, the incorporators shall publish a notice in a newspaper of general circulation in the area to be served by the proposed savings bank. Such notice shall contain:

(a) A statement that the application has been filed with the commissioner;

(b) The name of the community where the principal office of the proposed savings bank intends to locate;

(c) A statement that a public hearing shall be held to consider the application;

(d) A statement that any interested or affected party may file a written statement either favoring or protesting the creation of the proposed savings bank. Such statement must be filed with the commissioner within thirty (30) days of the date of publication; and

(e) When a certificate of incorporation is sought in order to effect the acquisition of an insolvent financial institution that is being sold pursuant to the provisions of state or federal law, any constraints of time imposed herein shall not apply if the commissioner determines that an emergency exists which requires expedition in granting a certificate in order to protect the interests of the public and the interests of the depositors and creditors of the financial institution.

(4) The board, at the public hearing, shall consider the findings and recommendation of the commissioner and shall hear such oral testimony as the commissioner may wish to give or be called upon to give, and shall also receive information and hear testimony from the incorporators of the proposed savings bank and from any and all other interested or affected parties. The board shall hear only testimony and receive only information which is relevant to the consideration of the application and the operation of the proposed savings bank.

SOURCES: Laws, 1992, ch. 489, § 12; reenacted without change, Laws, 1997, ch. 364, § 12; reenacted without change, Laws, 2001, ch. 457, § 12, eff from and after July 1, 2001.

Amendment Notes — The 2001 amendment reenacted the section without change.

§ 81-14-67. Grounds for approval or denial of application.

(1) After consideration of the findings and recommendation of the commissioner and his oral testimony, if any, and the consideration of such other information and evidence, either written or oral, as has come before it at the public hearing, the board shall approve or disapprove the application within thirty (30) days after the public hearing. The board shall approve the application if it finds that the certificate of incorporation is in compliance with the provisions of this chapter and the rules or regulations promulgated thereunder.

(2) If the board approves the application, the commissioner shall so notify the Secretary of State with a certificate of approval, accompanied by the original of the certificate of incorporation and the two (2) copies.

(3) Upon receipt of the certificate of approval, the original of the certificate of incorporation, and the two (2) copies, the Secretary of State shall, upon the payment by the newly chartered savings bank of the appropriate organization tax and fees, file the certificate of incorporation. He shall certify under his official seal the two (2) copies of the certificate of incorporation, one (1) of which shall be forwarded to the incorporators or their representative, the other shall be forwarded to the office of the commissioner for filing. Upon the recordation of the certificate of incorporation by the Secretary of State, the savings bank shall be a body politic and corporate under the name stated in such certificate, and shall be authorized to begin the savings bank business when duly licensed by the commissioner.

(4) The said certificate of incorporation, or a copy thereof, duly certified by the Secretary of State, or by the register of deeds of the county where the savings bank is located, or by the commissioner, under their respective seals, shall be evidence in all courts, and shall, in all judicial proceedings, be deemed prima facie evidence of the complete organization and incorporation of the savings bank purporting thereby to have been established.

(5) After approval of the application, the commissioner shall supervise and monitor the organization process. He shall ensure that sufficient pledges for deposit accounts or subscriptions for capital stock, as well as insurance of deposit accounts, have been secured by the organizers.

SOURCES: Laws, 1992, ch. 489, § 13; reenacted without change, Laws, 1997, ch. 364, § 13; reenacted without change, Laws, 2001, ch. 457, § 13, eff from and after July 1, 2001.

Amendment Notes — The 2001 amendment reenacted the section without change.

Cross References — Certificate of incorporation duly recorded under provisions of the section, as sufficient for licensing of savings bank, see § 81-14-71.

Amendments to certificate of incorporation to be certified and recorded as provided in this section, see § 81-14-79.

§ 81-14-69. Appeal.

The final decision of the board may be appealed by an applicant for a charter in accordance with Section 81-14-175.

SOURCES: Laws, 1992, ch. 489, § 14; reenacted without change, Laws, 1997, ch. 364, § 14; reenacted without change, Laws, 2001, ch. 457, § 14, eff from and after July 1, 2001.

Amendment Notes — The 2001 amendment reenacted the section without change.

§ 81-14-71. Insurance of accounts required.

All state savings banks must obtain and maintain insurance on all members' and customers' deposit accounts from an insurance corporation created by an act of Congress. Prior to the licensing of a savings bank, a certificate of incorporation duly recorded under the provisions of Section 81-19-67(3) shall be deemed to be sufficient certification to the insurance corporation that must be obtained within the time limit prescribed hereinafter. Subject to the rules and regulations of the commissioner, a state savings bank may obtain or participate in efforts to obtain insurance of deposits that is in excess of the amount eligible for federal insurance of accounts. Such insurance shall be known as "excess insurance."

SOURCES: Laws, 1992, ch. 489, § 15; reenacted without change, Laws, 1997, ch. 364, § 15; reenacted without change, Laws, 2001, ch. 457, § 15, eff from and after July 1, 2001.

Amendment Notes — The 2001 amendment reenacted the section without change.

§ 81-14-73. Status as IRS qualified thrift institution.

All state savings banks must qualify for and maintain eligibility for the bad debt reserve under Section 7701(a)(19) of the Internal Revenue Code of 1968 and any amendments thereto.

SOURCES: Laws, 1992, ch. 489, § 16; reenacted without change, Laws of 1997, ch. 364, § 16; reenacted without change, Laws, 2001, ch. 457, § 16, eff from and after July 1, 2001.

Amendment Notes — The 2001 amendment reenacted the section without change.

§ 81-14-75. Time allowed to commence business.

A newly chartered savings bank shall commence business within one (1) year after the date upon which its corporate existence was begun. A savings bank which does not commence business within such time shall forfeit its corporate existence, unless the commissioner, upon written request from the savings bank, approves an extension of time before the expiration of such one-year period. If the corporate existence is forfeited, the certificate of incorporation shall expire and any action taken in connection with the incorporation and chartering of the savings bank, with the exception of fees paid to the department, shall become null and void. The commissioner shall determine if a savings bank has failed to commence business within one (1) year, without extension as provided in this section, and shall notify the Secretary of State and the registrar of deeds in the county in which the savings bank is located that the certificate of incorporation has expired.

SOURCES: Laws, 1992, ch. 489, § 17; reenacted without change, Laws, 1997, ch. 364, § 17; reenacted without change, Laws, 2001, ch. 457, § 17, eff from and after July 1, 2001.

Amendment Notes — The 2001 amendment reenacted the section without change.

§ 81-14-77. Licensing.

A newly chartered savings bank shall be entitled to a license fee to operate upon payment to the department of the appropriate license fee as prescribed by the commissioner and upon evidence presented to the commissioner of the following:

(a) Capable, efficient and equitable management;

(b) Organization of the savings bank pursuant to law;

(c) Completion of the organization of the savings bank; and

(d) Passage of final inspection by the commissioner or his representative.

SOURCES: Laws, 1992, ch. 489, § 18; reenacted without change, Laws, 1997, ch. 364, § 18; reenacted without change, Laws, 2001, ch. 457, § 18, eff from and after July 1, 2001.

Amendment Notes — The 2001 amendment reenacted the section without change.

RESEARCH REFERENCES

Am Jur. 10 Am. Jur. 2d, Banks and Financial Institutions § 18.

§ 81-14-79. Amendments to certificate of incorporation.

Any amendment to the certificate of incorporation of a state savings bank shall be made at any annual or special meeting of such savings bank upon approval by a majority of votes or shares cast by members or stockholders present in person or by proxy at such meeting. Any amendment shall be certified by the appropriate corporate official, submitted to the commissioner for his approval or rejection, and if approved, then certified by the commissioner and recorded as provided in Section 81-14-67 for certificates of incorporation.

SOURCES: Laws, 1992, ch. 489, § 19; reenacted without change, Laws, 1997, ch. 364, § 19; reenacted without change, Laws, 2001, ch. 457, § 19, eff from and after July 1, 2001.

Amendment Notes — The 2001 amendment reenacted the section without change.

§ 81-14-81. List of stockholders to be maintained.

Every stock savings bank organized and operated under the provisions of this chapter shall at all times keep a current list of the names of all its stockholders. Whenever called upon by the commissioner, a stock savings bank shall file in the office of the commissioner a correct list of all its stockholders, the resident address of each, the number of shares of stock held by each, and the dates of issue.

SOURCES: Laws, 1992, ch. 489, § 20; reenacted without change, Laws, 1997, ch. 364, § 20; reenacted without change, Laws, 2001, ch. 457, § 20, eff from and after July 1, 2001.

Amendment Notes — The 2001 amendment reenacted the section without change.

RESEARCH REFERENCES

Am Jur. 10 Am. Jur. 2d, Banks and Financial Institutions §§ 249, 308, 328 et seq.

§ 81-14-83. Branch offices.

(1) Any state savings bank may apply to the commissioner for permission to establish a branch office. The application shall be in such form as may be prescribed by the commissioner and shall be approved or denied by the commissioner within one hundred twenty (120) days of filing.

(2) The commissioner shall approve a branch application when all of the following criteria are met:

(a) The applicant has gross assets of at least Ten Million Dollars ($10,000,000.00);

(b) The applicant has evidenced financial responsibility;

(c) The applicant has a net worth equal to or exceeding the amount required by the insurer of deposit accounts;

(d) The applicant has an acceptable internal control system. Such a system would include certain basic internal control requirements essential to the protection of assets and the promotion of operational efficiency regardless of the size of the applicant.

(3) Upon receipt of a branch application, the commissioner shall examine all the relevant facts connected with the establishment of the proposed branch office. If it appears to the satisfaction of the commissioner that the applicant has complied with all the requirements set forth in this section and the regulations for the establishment of a branch office, and that the savings bank is otherwise lawfully entitled to establish such branch office, then the commissioner shall approve the branch application.

(4) Within ten (10) days after the filing of the branch application with the commissioner, the applicant shall publish a notice in a newspaper of general circulation in the area to be served by the proposed branch office. Such notice shall contain:

(a) A statement that the branch application has been filed with the commissioner;

(b) The proposed address of the branch office, including city or town and street; and

(c) A statement that any interested party may file a written statement with the commissioner, within thirty (30) days of the date of the publication of the notice, protesting the establishment of the proposed branch office and requesting a hearing before the commissioner.

(5) Any interested party may file a written statement with the commissioner within thirty (30) days of the date of initial publication of the branch application notice, protesting the establishment of the proposed branch office and requesting a hearing before the commissioner. If a hearing is held on the branch application, the commissioner shall only receive information and hear testimony from the applicant and from any interested party which is relevant to the branch application and the operation of the proposed branch office. The commissioner shall issue his final decision on the branch application within thirty (30) days following the hearing.

(6) If a hearing is not held on the branch application, the commissioner shall issue his final decision within one hundred twenty (120) days of the filing of the application.

SOURCES: Laws, 1992, ch. 489, § 21; Laws, 1994, ch. 622, § 143; reenacted without change, Laws, 1997, ch. 364, § 21; reenacted without change, Laws, 2001, ch. 457, § 21, eff from and after July 1, 2001.

Amendment Notes — The 2001 amendment reenacted the section without change.

RESEARCH REFERENCES

Am Jur. 10 Am. Jur. 2d, Banks and Financial Institutions §§ 523, 623-631.

§ 81-14-85. Request to change location of branch or principal office.

The board of directors of a state savings bank may change the location of a branch office or the principal office of the savings bank with the prior written approval of the commissioner. The commissioner may request, and the savings bank shall provide, such information as the commissioner determines necessary to evaluate the request.

SOURCES: Laws, 1992, ch. 489, § 22; reenacted without change, Laws, 1997, ch. 364, § 22; reenacted without change, Laws, 2001, ch. 457, § 22, eff from and after July 1, 2001.

Amendment Notes — The 2001 amendment reenacted the section without change.

§ 81-14-87. Approval revoked; branch office.

The commissioner may, for good cause and after a hearing, order the closing of a branch office. Such order shall be made in writing to the savings bank and shall fix a reasonable time to close the branch office.

SOURCES: Laws, 1992, ch. 489, § 23; Laws, 1994, ch. 622, § 144; reenacted without change, Laws, 1997, ch. 364, § 23; reenacted without change, Laws, 2001, ch. 457, § 23, eff from and after July 1, 2001.

Amendment Notes — The 2001 amendment reenacted the section without change.

§ 81-14-89. Branch offices closed.

No branch office in this state may be discontinued or abandoned without the consent in writing of the commissioner first obtained.

SOURCES: Laws, 1992, ch. 489, § 24; Laws, 1996, ch. 400, § 32; reenacted without change, Laws, 1997, ch. 364, § 24; reenacted without change, Laws, 2001, ch. 457, § 24, eff from and after July 1, 2001.

Amendment Notes — The 2001 amendment reenacted the section without change.

§ 81-14-91. Loan production office.

A state savings bank may open or close a loan production office with the prior written approval of the commissioner. The commissioner may request, and the savings bank shall provide, such information as the commissioner determines necessary to evaluate the request.

SOURCES: Laws, 1992, ch. 489, § 25; reenacted without change, Laws, 1997, ch. 364, § 25; reenacted without change, Laws, 2001, ch. 457, § 25, eff from and after July 1, 2001.

Amendment Notes — The 2001 amendment reenacted the section without change.

ARTICLE 3.

CORPORATE CHANGES.

SEC.

81-14-101. Conversion to savings bank.
81-14-103. Conversion from state to federal charter.
81-14-105. Simultaneous charter and ownership conversion.
81-14-107. Conversion of mutual to stock savings bank.
81-14-109. Conversion of stock savings bank to mutual savings bank.
81-14-111. Merger of like savings banks.
81-14-113. Merger of savings banks where ownership is converted.
81-14-115. Merger of mutual and stock savings banks.
81-14-117. Simultaneous merger and conversion.
81-14-119. Merger of federal charters with state savings banks.
81-14-121. Voluntary dissolution by stockholders or members.
81-14-123. Rules, regulations and reports of voluntary dissolution.
81-14-125. Stock dividends.
81-14-127. Supervisory mergers, consolidations, conversions and combination mergers and conversions.
81-14-129. Interim savings banks.

§ 81-14-101. Conversion to savings bank.

Any state or federal thrift institution or state or national bank may apply for conversion into a state-chartered savings bank upon the affirmative vote of fifty-one percent (51%) or more of the total number of votes of the members eligible to be cast or an affirmative vote of sixty-six and two-thirds percent (66-⅔%) or more of all the issued and outstanding stock of such institution, at an annual meeting or at any special meeting of the members or stockholders called to consider such action. Upon such affirmative vote, the institution may apply for a certificate of authority by filing with the commissioner a certificate signed by its president or cashier and secretary which sets forth the corporate action herein prescribed and asserts that the institution has complied with the provisions of the laws of the United States. The institution shall also file with the commissioner the plan of conversion and the proposed amendments to its articles of incorporation or articles of association as approved by the members or stockholders for the operation of the institution as a state-chartered savings bank. Upon receipt of the prescribed application, the commissioner shall examine all facts associated with the conversion. The expenses and cost incurred for such special examination shall be paid by the institution applying for permission to convert. The commissioner shall present his findings and recommendations to the State Board of Banking Review for consideration. Upon approval by the State Board of Banking Review, the commissioner shall issue a certificate of authority to the applicant allowing the conversion to proceed.

SOURCES: Laws, 1992, ch. 489, § 26; Laws, 1994, ch. 622, § 145; Laws, 1995, ch. 308, § 9; reenacted without change, Laws, 1997, ch. 364, § 26; reenacted without change, Laws, 2001, ch. 457, § 26, eff from and after July 1, 2001.

Cross References — Conversion of association or federal association prohibited except as provided in §§ 81-12-1 et seq. and this section, see § 81-12-63.

Conversion from federal charter to state charter with simultaneous ownership conversion, see § 81-14-105.

RESEARCH REFERENCES

Am Jur. 10 Am. Jur. 2d, Banks and Financial Institutions §§ 191, 192 et seq., 234, 238.

§ 81-14-103. Conversion from state to federal charter.

Any state savings bank, stock or mutual, organized and operated under the provisions of this chapter, may convert to a federal charter in accordance with the provisions of the laws and regulations of the United States and with the same force and effect as though originally incorporated under such laws. The procedure to convert shall be as follows:

(a) The savings bank shall submit a plan of conversion to the commissioner, and he may approve the plan, with or without amendment, or reject the plan. If he approves, the plan shall be submitted to the members or stockholders as hereinafter provided. If the commissioner rejects the plan, he shall state his objections in writing and give the converting savings bank an opportunity to amend the plan.

(b) A meeting of the members or stockholders shall be held after fifteen (15) days' notice to each member or stockholder. The board of directors may provide notice of the meeting to each member or stockholder either by mail, postage prepaid, or by publication of notice, once a week for two (2) weeks preceding such meeting, in a newspaper of general circulation in the county where such savings bank has its principal office. The notice may contain the following statement: "The purpose of this meeting is to consider the conversion of this state-chartered savings bank to a federal charter, pursuant to the laws of the United States." An appropriate officer of the savings bank shall make proof by affidavit at such meeting of due service of the notice for such meeting.

(c) At the meeting of the members or stockholders of such savings bank, such members or stockholders may by affirmative vote of a majority of votes or shares present, in person or by proxy, resolve to convert said savings bank to a federal charter. A certified copy of the minutes from such meeting shall be filed in the office of the commissioner and shall be prima facie evidence of the holding of the meeting.

(d) Within a reasonable time after the receipt of a certified copy of the minutes, the commissioner shall either approve or reject the proceedings of the meeting for compliance with the procedure set forth in this section. If the commissioner approves the proceedings, he shall issue a certificate of his approval of conversion. Such certificate shall be recorded by the savings bank in the office of the Secretary of State. If the commissioner rejects the proceedings, he shall provide a written explanation of his disapproval and notify the savings bank of his disapproval.

(e) The savings bank shall file an application, in the manner prescribed or authorized by the laws and regulations of the United States, to consummate the conversion to a federal charter. A copy of the charter or authorization issued to the savings bank by the appropriate federal regulatory authority shall be filed with the commissioner. Upon filing with the commissioner, the savings bank shall cease to be a state savings bank and shall be a federal depository institution.

(f) Whenever any savings bank shall convert to a federal charter, it shall cease to be a savings bank under the laws of this state; provided, however, that its corporate existence shall be extended for the purpose of prosecuting or defending suits, enabling such savings bank to close its business affairs as a state savings bank, and disposing of and conveying its property. At the time when such conversion becomes effective, all the property of the state savings bank, including all its rights, title and interest in and to all property of whatever kind, and every right, privilege, interest and asset of any conceivable value or benefit then existing, belonging or pertaining to it, or which would inure to it, shall immediately by act of law and without any conveyance or transfer, and without any further act or deed, be vested in and become the property of the federal depository institution which shall have, hold and enjoy such property in its own right as fully as such property was possessed, held and enjoyed by the savings bank; and the federal depository institution as of the effective time of such conversion shall succeed to all the rights, obligations and relations of the state savings bank.

SOURCES: Laws, 1992, ch. 489, § 27 1994, ch. 622, § 146; reenacted without change, Laws, 1997, ch. 364, § 27; reenacted without change, Laws, 2001, ch. 457, § 27, eff from and after July 1, 2001.

Cross References — Conversion from state charter to federal charter with simultaneous ownership conversion, see § 81-14-105.

RESEARCH REFERENCES

Am Jur. 10 Am. Jur. 2d, Banks and Financial Institutions §§ 191, 192 et seq., 234, 238.

§ 81-14-105. Simultaneous charter and ownership conversion.

(1) In the event of a state charter to federal charter conversion, when the form of ownership will also simultaneously be changed from stock to mutual, or from mutual to stock, the conversion shall proceed initially as if it involves only a charter conversion under Section 81-14-103. After the savings bank becomes a federal depository institution, then the federal regulatory authority shall govern the continuing conversion of the form of ownership of such newly converted depository institution.

(2) In the event of a federal charter to state charter conversion, when the form of ownership will also simultaneously be changed from stock to mutual or from mutual to stock, the conversion shall proceed initially as if it involves only a charter conversion under Section 81-14-101. After the federal depository institution becomes a state savings bank, the provisions of Section 81-14-107 or Section 81-14-109 shall govern the continuing conversion of the form of ownership of such newly converted savings bank.

(3) The provisions of this section shall not apply to any simultaneous charter and ownership conversion accomplished in conjunction with a merger under the provisions of Section 81-14-117.

SOURCES: Laws, 1992, ch. 489, § 28; reenacted without change, Laws, 1997, ch. 364, § 28; reenacted without change, Laws, 2001, ch. 457, § 28, eff from and after July 1, 2001.

RESEARCH REFERENCES

Am Jur. 10 Am. Jur. 2d, Banks and Financial Institutions §§ 191, 192 et seq., 234, 238.

§ 81-14-107. Conversion of mutual to stock savings bank.

(1) Any mutual savings bank may convert from mutual to the stock form of ownership as provided in this section.

(2) A mutual savings bank may apply to the commissioner for permission to convert to a stock savings bank and for certification of appropriate amendments to the savings bank's certificate of incorporation. Upon receipt of an application to convert from mutual to stock form, the commissioner shall examine all facts connected with the requested conversion. The expenses and cost of such examination, monitoring and supervision shall be paid by the savings bank applying for permission to convert.

(3) The savings bank shall submit a plan of conversion as a part of the application to the commissioner. The commissioner may approve it with or without amendment, if it appears that:

(a) After conversion the savings bank will be in sound financial condition and will be soundly managed;

(b) The conversion will not impair the capital of the savings bank nor adversely affect the savings bank's operations;

(c) The conversion will be fair and equitable to the members of the savings bank and no person whether member, employee or otherwise, will receive any inequitable gain or advantage by reason of the conversion;

(d) The savings bank services provided to the public by the savings bank will not be adversely affected by the conversion;

(e) The substance of the plan has been approved by a vote of two-thirds (⅔) of the board of directors of the savings bank;

(f) All shares of stock issued in connection with the conversion are offered first to the members of the savings bank;

(g) All stock shall be offered to members of the savings bank and others in prescribed amounts and otherwise pursuant to a formula and procedure which is fair and equitable and will be fairly disclosed to all interested persons;

(h) The plan provides a statement as to whether stockholders shall have preemptive rights to acquire additional or treasury shares of the savings bank.

If the commissioner approves the plan, then the plan shall be submitted to the members as hereinafter provided. If he refuses to approve the plan, the commissioner shall state his objections in writing and give the converting savings bank an opportunity to amend the plan to obviate such objections.

(4) After lawful notice to the members of the savings bank and full and fair disclosure, the plan must be approved by a majority of the total votes which members of the savings bank are eligible and entitled to cast. Such a

vote by the members may be in person or by proxy. Following the vote of the members, the results of the vote certified by an appropriate officer of the savings bank shall be filed by the commissioner. The commissioner shall then either approve or disapprove the requested conversion. After approval of the conversion, the commissioner shall supervise and monitor the conversion process and he shall ensure that the conversion is conducted pursuant to law and the savings bank's approved plan of conversion.

(5) The commissioner may promulgate such rules and regulations as may be necessary to govern conversions; however, such rules and regulations as may be promulgated by the commissioner shall be equal to or exceed the requirements for conversion, if any, imposed by the federal insurer of deposit accounts.

SOURCES: Laws, 1992, ch. 489, § 29; Laws, 1994, ch. 622, § 147; reenacted without change, Laws, 1997, ch. 364, § 29; reenacted without change, Laws, 2001, ch. 457, § 29, eff from and after July 1, 2001.

Cross References — Conversion from federal charter to state charter with simultaneous ownership conversion, see § 81-14-105.

Right of members of converting savings bank, providing for ownership by holding company, to purchase capital stock of holding company in lieu of capital stock of converted savings bank in accordance with this section, see § 81-14-401.

RESEARCH REFERENCES

Am Jur. 10 Am. Jur. 2d, Banks and Financial Institutions §§ 191, 192 et seq., 234, 238.

§ 81-14-109. Conversion of stock savings bank to mutual savings bank.

Any stock savings bank organized and operating under the provisions of this chapter may, subject to the approval of the commissioner, convert to a mutual savings bank under the provisions of this section. The commissioner may promulgate rules and regulations governing the conversion of stock savings banks to mutual savings banks. Such rules and regulations shall include, but shall not be limited to requirements that:

(a) The conversion neither impair the capital of the converting savings bank nor adversely affect its operations;

(b) The conversion shall be fair and equitable to all stockholders of the converting savings bank;

(c) The public shall not be adversely affected by the conversion;

(d) Conversion of a savings bank shall be accomplished only pursuant to a plan approved by the commissioner. Such plan must have been approved by an affirmative vote of two-thirds (⅔) of the members of the board of directors of the converting savings bank, after a full and fair disclosure to the stockholders, and by an affirmative vote of a majority of the votes which stockholders of the savings bank are entitled to cast;

(e) The plan of conversion provides that:

(i) Deposit accounts will be issued in connection with the conversion to the stockholders of the converting savings bank;

(ii) A uniform date will be fixed for the determination of the stockholders to whom, and the amount to each stockholder of which, deposit accounts shall be made available;

(iii) Deposit accounts made available to stockholders will be based upon a fair and equitable formula approved by the commissioner and fully and fairly disclosed to the stockholders of the converting savings bank.

SOURCES: Laws, 1992, ch. 489, § 30; reenacted without change, Laws, 1997, ch. 364, § 30; reenacted without change, Laws, 2001, ch. 457, § 30, eff from and after July 1, 2001.

Cross References — Conversion from federal charter to state charter with simultaneous ownership conversion, see § 81-14-105.

RESEARCH REFERENCES

Am Jur. 10 Am. Jur. 2d, Banks and Financial Institutions §§ 191, 192 et seq., 234, 238.

§ 81-14-111. Merger of like savings banks.

Any two (2) or more mutual savings banks, or any two (2) or more stock savings banks, organized and operating, may merge or consolidate into a single savings bank. The procedure to merge shall be as follows:

(a) The directors, or a majority of them, of such savings banks may, at separate meetings, enter into a written agreement of merger. Such agreement shall be signed by the majority of the directors under the corporate seals of the respective savings banks and shall specify each savings bank to be merged and the savings bank which is to receive into itself the merging savings bank or banks. Such agreement shall prescribe the terms and conditions of the merger and the mode of carrying it into effect. The merger agreement may provide such other provisions with respect to the merger as appear necessary or desirable, or as the commissioner may require to enable him to discharge his duties with respect to such merger.

(b) A meeting of the members or stockholders of each of the savings banks shall be held separately upon written notice of not less than fifteen (15) days to members or stockholders of each savings bank. The notice shall specify the time, place and purpose for the meeting. Notice shall be made by personal service or postage prepaid mail to the last address of each member or stockholder appearing upon the records of the savings bank, or by publication of notice, at least once a week for two (2) weeks preceding the meeting, in one or more newspapers of general circulation in the county or counties where each savings bank has its principal or a branch office, or in a newspaper of general circulation in an adjoining county if none is available in the county. An appropriate officer of the savings bank shall make proof by affidavit at such meeting of the due service of the notice for such meeting.

(c) At separate meetings of the members or stockholders of the respective savings banks, the members or stockholders may adopt, by an affirmative vote of a majority of the votes or shares present, in person or by proxy, a resolution to merge into a single savings bank upon the terms of the merger agreement as agreed upon by the directors of the respective savings banks and as approved by the commissioner. Upon the adoption of the resolution, a copy of the minutes of the proceedings of the meetings of the members or stockholders of the respective savings banks certified by an appropriate officer of the merging savings banks shall be filed in the office of the commissioner. Within fifteen (15) days after the receipt of a certified copy of the minutes of such meeting the commissioner shall either approve or disapprove the proceedings for compliance with this section. If the proceedings are approved by him, he shall issue a certificate of his approval of the merger. The certificate shall be filed and recorded in the office of the Secretary of State. When the certificate is so filed, the merger agreement shall take effect according to its terms and shall be binding upon all the members or stockholders of the merging savings banks, and it shall be deemed to be the act of merger of such constituent savings banks under the laws of this state. The certificate or certified copy thereof shall be evidence of the agreement and act of merger of such constituent savings banks under the laws of this state and the observance and performance of all acts and conditions necessary to have been observed and performed precedent to such merger. Within sixty (60) days after its receipt from the Secretary of State, the certified copy of the certificate shall be filed with the registrar of deeds of the county or counties in which the respective savings banks so merged have recorded their original certificates of incorporation. Failure to file shall subject the savings bank to a penalty of One Hundred Dollars ($100.00) to be collected by the Secretary of State. If the commissioner disapproves the proceedings, he shall issue a written statement of the reasons for his disapproval and notify the savings bank to that effect.

(d) Upon the merger of any savings bank:

(i) Its corporate existence shall be merged into that of the receiving savings bank; and all its right, title, interest in and to all property of whatsoever kind, and every right, privilege, interest or asset of any conceivable value or benefit then existing belonging or pertaining to it, or which would inure to it under an unmerged existence, shall immediately by act of law and without any conveyance or transfer, and without any further act or deed, be vested in and become the property of such receiving savings bank which shall have, hold and enjoy such property in its own right as fully as if such property were possessed, held or enjoyed by the savings banks so merged; and such receiving savings bank shall absorb fully and completely the savings bank or banks so merged.

(ii) Its rights, liabilities, obligations and relations to any person shall remain unchanged and the savings bank into which it has been merged shall succeed to all the relations, obligations and liabilities as though it had assumed or incurred the same. No obligation or liability of a member, customer or stockholder in a savings bank shall be affected by the merger, but obligations and liabilities shall continue as they existed before the merger, unless otherwise provided in the merger agreement.

(iii) A pending action or other judicial proceeding to which any merging savings bank is a party shall not be deemed to have abated or to have discontinued by reason of the merger, but may be prosecuted to final judgment, order or decree as if the merger had not occurred; or the receiving savings bank may be substituted as a party to such action or proceeding, and any judgment, order or decree may be rendered for or against the receiving savings bank as if the merger had not occurred.

(e) Notwithstanding any other provision of this section, the commissioner may waive any of the foregoing requirements upon finding that such waiver would be in the best interest of the members or stockholders of the merging savings banks.

SOURCES: Laws, 1992, ch. 489, § 31; Laws, 1994, ch. 622, § 148; reenacted without change, Laws, 1997, ch. 364, § 31; reenacted without change, Laws, 2001, ch. 457, § 31, eff from and after July 1, 2001.

RESEARCH REFERENCES

Am Jur. 10 Am. Jur. 2d, Banks and Financial Institutions §§ 191, 192 et seq., 234, 238.

§ 81-14-113. Merger of savings banks where ownership is converted.

(1) Any two (2) or more state mutual savings banks may merge to form a single state stock savings bank in separate merger-conversion proceedings or in simultaneous merger-conversion proceedings.

(2) Any two (2) or more state stock savings banks may merge to form a single state mutual savings bank in separate merger-conversion proceedings or in simultaneous merger-conversion proceedings.

(3) The commissioner may promulgate rules and regulations to facilitate the transition from two (2) or more savings banks to a single savings bank under a new form of ownership.

SOURCES: Laws, 1992, ch. 489, § 32; reenacted without change, Laws, 1997, ch. 364, § 32; reenacted without change, Laws, 2001, ch. 457, § 32, eff from and after July 1, 2001.

RESEARCH REFERENCES

Am Jur. 10 Am. Jur. 2d, Banks and Financial Institutions §§ 191, 192 et seq., 234, 238.

§ 81-14-115. Merger of mutual and stock savings banks.

(1) Any two (2) or more savings banks, when one or more is mutually owned and one or more is stock owned, may merge to form either a mutual or stock savings bank in separate conversion-merger proceedings and in simultaneous conversion-merger proceedings.

(2) The commissioner may promulgate rules and regulations to facilitate the merger of mutual and stock savings banks.

SOURCES: Laws, 1992, ch. 489, § 33; reenacted without change, Laws, 1997, ch. 364, § 33; reenacted without change, Laws, 2001, ch. 457, § 33, eff from and after July 1, 2001.

RESEARCH REFERENCES

Am Jur. 10 Am. Jur. 2d, Banks and Financial Institutions §§ 191, 192 et seq., 234, 238.

§ 81-14-117. Simultaneous merger and conversion.

(1) Any combination of associations and state savings banks may merge to form either an association or state savings bank.

(2) The commissioner shall promulgate rules and regulations to facilitate the merger of associations and state savings banks.

SOURCES: Laws, 1992, ch. 489, § 34; reenacted without change, Laws, 1997, ch. 364, § 34; reenacted without change, Laws, 2001, ch. 457, § 34, eff from and after July 1, 2001.

RESEARCH REFERENCES

Am Jur. 10 Am. Jur. 2d, Banks and Financial Institutions §§ 191, 192 et seq., 234, 238.

§ 81-14-119. Merger of federal charters with state savings banks.

(1) Any two (2) or more depository institutions, when one or more is a state savings bank and one or more is a federal depository institution operating in Mississippi, may merge under either a state savings bank charter or a federal charter.

(2) The commissioner shall promulgate rules and regulations to facilitate the merger of federal depository institutions and state savings banks.

SOURCES: Laws, 1992, ch. 489, § 35; reenacted without change, Laws, 1997, ch. 364, § 35; reenacted without change, Laws, 2001, ch. 457, § 35, eff from and after July 1, 2001.

RESEARCH REFERENCES

Am Jur. 10 Am. Jur. 2d, Banks and Financial Institutions §§ 191, 192 et seq., 234, 238.

§ 81-14-121. Voluntary dissolution by stockholders or members.

At any annual or special meeting called for such purpose, a savings bank may, by an affirmative vote in person or by proxy of at least two-thirds (⅔) of the total number of shares or votes which all members or stockholders of the association are entitled to cast, resolve to dissolve and liquidate the savings bank and adopt a plan of voluntary dissolution. Upon adoption of such resolution and plan of voluntary dissolution, the members or stockholders shall proceed to elect not more than three (3) liquidators who shall post bond as required by the commissioner. The liquidators shall have full power to execute the plan. The procedure thereafter shall be as follows:

(a) A copy of the resolution certified by an appropriate officer of the savings bank, the minutes of the meeting of members or stockholders, the plan of liquidation and an itemized statement of the savings bank's assets and liabilities sworn to by a majority of its board of directors, shall be filed with the commissioner. The minutes of the meeting of members or stockholders shall be certified by an appropriate officer of the institution and shall set forth the notice given and the time of mailing thereof, the vote on the resolution and the total number of shares or votes which all members of the savings bank were entitled to cast thereon, and the names of the liquidators elected.

(b) If the commissioner finds that the proceedings are in accordance with the provisions of this chapter and that the plan of liquidation is not reasonably unfair to any person affected, he shall attach his certificate of approval to the plan and shall forward one (1) copy to the liquidators and one (1) copy to the savings bank's federal deposit account insurance corporation. Once the commissioner has approved the resolution and the plan of liquidation, it shall thereafter be unlawful for such savings bank to accept any additional deposit accounts or additions to deposit accounts or make any additional loans. All of the income and receipts in excess of actual expenses of liquidation of the savings bank shall be applied to the discharge of its liabilities.

(c) The liquidator or liquidators so appointed shall be paid a reasonable compensation by the liquidating savings bank subject to the approval of the commissioner.

(d) The plan shall become effective upon the recording of the commissioner's certificate of approval in the manner required by this chapter for the recording of the certificate of incorporation.

(e) The liquidation of the savings bank shall be subject to the supervision and examination of the commissioner.

SOURCES: Laws, 1992, ch. 489, § 36; reenacted without change, Laws, 1997, ch. 364, § 36; reenacted without change, Laws, 2001, ch. 457, § 36, eff from and after July 1, 2001.

RESEARCH REFERENCES

Am Jur. 10 Am. Jur. 2d, Banks and Financial Institutions §§ 1017, 1026 et seq.

§ 81-14-123. Rules, regulations and reports of voluntary dissolution.

(1) The commissioner shall promulgate rules and regulations governing the dissolution and liquidation of state savings banks.

(2) Upon completion of liquidation, the liquidators shall file with the commissioner a final report and accounting of the liquidation. The approval of the report by the commissioner shall operate as a complete and final discharge of the liquidators, the board of directors and each member or stockholder in connection with the liquidation of the savings bank. Upon approval of the report, the commissioner shall issue a certificate of dissolution of the savings bank and shall record such certificate in the manner required by this chapter for the recording of certificates of incorporation. Upon such recording, the dissolution shall be effective.

SOURCES: Laws, 1992, ch. 489, § 37; reenacted without change, Laws, 1997, ch. 364, § 37; reenacted without change, Laws, 2001, ch. 457, § 37, eff from and after July 1, 2001.

RESEARCH REFERENCES

Am Jur. 10 Am. Jur. 2d, Banks and Financial Institutions §§ 1017, 1026 et seq.

§ 81-14-125. Stock dividends.

No savings bank shall declare or pay any dividend upon its common stock unless such savings bank has received written approval by the Commissioner of Banking and Consumer Finance. Directors declaring a dividend in violation of the provisions of this section shall be personally liable to the full amount of the dividend so declared and it shall be the duty of the commissioner, upon discovering the payment of any such dividend, to forthwith make demand upon the directors that the same be restored to the savings bank, and upon their failure so to do he shall cause suit to be brought against them in the chancery court of the county in which the savings bank is located, either in his name or in the name of the savings bank, to recover the same for the benefit of the savings bank.

SOURCES: Laws, 1992, ch. 489, § 38; Laws, 1996, ch. 400, § 33; reenacted without change, Laws, 1997, ch. 364, § 38; reenacted without change, Laws, 2001, ch. 457, § 38, eff from and after July 1, 2001.

RESEARCH REFERENCES

Am Jur. 10 Am. Jur. 2d, Banks and Financial Institutions §§ 285 et seq.

§ 81-14-127. Supervisory mergers, consolidations, conversions and combination mergers and conversions.

(1) Notwithstanding any other provision of this chapter, in order to protect the public, the commissioner, upon making a finding that a state savings bank is unable to operate in a safe and sound manner, may authorize or require a short form merger and conversion of the state savings bank, or any other transaction, as to which the finding is made.

(2) The commissioner shall promulgate rules and regulations to govern mergers, consolidations, conversions, combination mergers and conversions and other supervisory action authorized by this section.

SOURCES: Laws, 1992, ch. 489, § 39; reenacted without change, Laws, 1997, ch. 364, § 39; reenacted without change, Laws, 2001, ch. 457, § 39, eff from and after July 1, 2001.

RESEARCH REFERENCES

Am Jur. 10 Am. Jur. 2d, Banks and Financial Institutions §§ 191, 192 et seq., 234, 238.

§ 81-14-129. Interim savings banks.

(1) Article 2 of this chapter shall not apply to applications for permission to organize an interim state savings bank so long as the application is approved by the commissioner.

(2) Preliminary approval of an application for permission to organize an interim state savings bank shall be conditional upon the commissioner's approval of an application to merge the interim savings bank and an existing stock savings bank or on the commissioner's approval of any other transaction.

(3) The commissioner shall promulgate rules and regulations to govern the formation of interim savings banks authorized by this section.

SOURCES: Laws, 1992, ch. 489, § 40; reenacted without change, Laws, 1997, ch. 364, § 40; reenacted without change, Laws, 2001, ch. 457, § 40, eff from and after July 1, 2001.

ARTICLE 4.

SUPERVISION.

SEC.
81-14-151. Supervision.
81-14-153. Power of commissioner to promulgate rules and regulations; reproduction of records.
81-14-155. Examinations by commissioner; report.
81-14-157. Supervisory and other fees.
81-14-159. Prolonged audit, examination or revaluation; payments of costs.
81-14-161. Commissioner to have right of access to books and records of savings banks; right to issue subpoenas, administer oaths, examine witnesses.
81-14-163. Test appraisals of collateral for loans; expense paid.
81-14-165. Relationship of savings banks with department.
81-14-167. Confidential information.
81-14-169. Statement filed by savings bank; publishing requirement.
81-14-171. Annual audit requirement.
81-14-173. Prohibited practices.
81-14-175. Appeal from final rule, regulation or order of commissioner or board.
81-14-177. Credit allowed for savings banks; commissioner discretion.
81-14-179. Commissioner to provide copy of call reports; failure or refusal; misdemeanor.

§ 81-14-151. Supervision.

The commissioner is empowered and directed to perform the duties and exercise the powers as to savings banks organized or operated under this chapter, except as otherwise provided herein.

SOURCES: Laws, 1992, ch. 489, § 41; Laws, 1994, ch. 622, § 149; reenacted without change, Laws, 1997, ch. 364, § 41; reenacted without change, Laws, 2001, ch. 457, § 41, eff from and after July 1, 2001.

RESEARCH REFERENCES

Am Jur. 10 Am. Jur. 2d, Banks and Financial Institutions §§ 19 et seq.

§ 81-14-153. Power of commissioner to promulgate rules and regulations; reproduction of records.

(1) The commissioner shall have the authority to promulgate rules, instructions and regulations necessary to the discharge of his duties and powers for the supervision and regulation of savings banks and for the protection of the public investment in savings banks.

(2) Without limiting the generality of subsection (1), rules, instructions and regulations may be promulgated with respect to:

(a) Reserve requirements;

(b) Stock ownership and dividends;

(c) Stock transfers;

(d) Incorporators, stockholders, directors, officers and employees of a savings bank;

(e) Bylaws;

(f) The operation of savings banks;

(g) Deposit accounts, bonus plans and contracts for savings programs;

(h) Loans and loan expenses;

(i) Investments;

(j) Forms and definitions;

(k) Types of financial records to be maintained by savings banks;

(*l*) Retention periods of various financial records;

(m) Internal control procedures of savings banks;

(n) Conduct and management of savings banks;

(o) Chartering and branching;

(p) Liquidations;

(q) Mergers;

(r) Conversions;

(s) Reports which may be required by the commissioner;

(t) Conflicts of interest;

(u) Service corporations; and

(v) Holding companies.

(3) Any state savings bank may cause any or all of its records in its custody to be reproduced in a format of storage commonly used, whether electronic, imaged, magnetic, microphotographic, or otherwise, and any reproduction so made shall have the same force and effect as the original thereof and be admitted in evidence equally with the original.

SOURCES: Laws, 1992, ch. 489, § 42; reenacted without change, Laws, 1997, ch. 364, § 42; Laws, 2000, ch. 335, § 4; reenacted without change, Laws, 2001, ch. 457, § 42, eff from and after July 1, 2001.

Cross References — Record keeping — banks, see § 81-5-7.
Record keeping — saving associations, see § 81-12-95.
Record keeping — credit unions, see § 81-13-73.

RESEARCH REFERENCES

Am Jur. 10 Am. Jur. 2d, Banks and Financial Institutions §§ 19 et seq.

§ 81-14-155. Examinations by commissioner; report.

(1) If at any time the commissioner deems it prudent, it shall be his duty to examine and investigate everything relating to the business of a state savings bank, or a holding company thereof, and to appoint a suitable and competent person to make such investigation. The investigator shall file with the commissioner a full report of his finding in such case, including in his report any violation of law, or any unauthorized or unsafe practices of the savings bank, disclosed by his examination.

(2) The commissioner shall furnish a copy of such report to the savings bank under investigation and may, upon request, furnish a copy of the report to the insurer of accounts.

(3) No savings bank shall willfully delay or willfully obstruct an examination in any fashion. Any person failing to comply with this subsection shall be guilty of a misdemeanor.

(4) No person having in his possession or control any books, accounts or papers of any state savings bank shall refuse to exhibit such books, accounts or papers to the commissioner or his agents on demand, or shall knowingly or willingly make any false statement in regard to such books, accounts or papers. Any person failing to comply with this subsection shall be guilty of a misdemeanor.

SOURCES: Laws, 1992, ch. 489, § 43; reenacted without change, Laws, 1997, ch. 364, § 43; reenacted without change, Laws, 2001, ch. 457, § 43, eff from and after July 1, 2001.

Cross References — Costs and expenses of examination and investigation to be paid by savings bank whenever person is appointed pursuant to this section to conduct examination, see § 81-14-157.

Prolonged audit, examination or revaluation when examination under provisions of this section fails to disclose complete financial condition of savings bank, see § 81-14-159.

RESEARCH REFERENCES

Am Jur. 10 Am. Jur. 2d, Banks and Financial Institutions §§ 19 et seq.

§ 81-14-157. Supervisory and other fees.

(1) Every state savings bank, including savings banks in the process of voluntary liquidation, or a holding company thereof, shall pay into the office of the commissioner an annual supervisory fee and fees for various activities in the same amounts and in the same manner as charged to savings associations under Section 81-12-193.

(2) All funds and revenue collected by the department under the provisions of this section and all other sections of this chapter which authorize the collection of fees and other funds, except for the civil penalties provided in Sections 81-14-203 and 81-14-205, shall be deposited with the State Treasurer to the credit of the department and expended solely to defray expenses incurred by the office of the commissioner in carrying out the supervisory and auditing functions. The civil penalties provided in Sections 81-14-203 and 81-14-205 shall be deposited into the State General Fund, unless such penalty is appealed to a court of competent jurisdiction as provided in Section 81-14-213, in which case such penalty shall then be deposited with the State Treasurer to the credit of the department until such appeal is resolved. If such appeal is resolved in favor of the department, then the commissioner shall

notify and direct the State Treasurer to transfer the amount of such fine from the credit of the department to the credit of the State General Fund.

(3) Notwithstanding any of the provisions of this section, whenever the commissioner under the provisions of Section 81-14-155 appoints a suitable and competent person, other than a person employed by the commissioner's office, to make an examination and investigation of the business of a state savings bank, all costs and expenses relative to such examination and investigation shall be paid by such savings bank.

SOURCES: Laws, 1992, ch. 489, § 44; Laws, 1994, ch. 622, § 150; reenacted without change, Laws, 1997, ch. 364, § 44; reenacted without change, Laws, 2001, ch. 457, § 44, eff from and after July 1, 2001.

RESEARCH REFERENCES

Am Jur. 10 Am. Jur. 2d, Banks and Financial Institutions §§ 19 et seq.

§ 81-14-159. Prolonged audit, examination or revaluation; payments of costs.

(1) If, in the opinion of the commissioner an examination conducted under the provisions of Section 81-14-155 fails to disclose the complete financial condition of a savings bank, he may in order to ascertain its complete financial condition:

(a) Make an extended audit or examination of the savings bank, or cause such an audit or examination to be made by an independent auditor;

(b) Make an extended revaluation of any of the assets or liabilities of the savings bank, or cause an independent appraiser to make such revaluation.

(2) The commissioner shall collect from the savings bank a reasonable sum for actual or necessary expenses of such an audit, examination or revaluation.

SOURCES: Laws, 1992, ch. 489, § 45; reenacted without change, Laws, 1997, ch. 364, § 45; reenacted without change, Laws, 2001, ch. 457, § 45, eff from and after July 1, 2001.

§ 81-14-161. Commissioner to have right of access to books and records of savings banks; right to issue subpoenas, administer oaths, examine witnesses.

(1) The commissioner and his agents:

(a) Shall have free access to all books and records of a savings bank, or a service corporation or holding company thereof, that relate to its business, and the books and records kept by any officer, agent or employee relating to the business of the savings bank;

(b) May subpoena witnesses and administer oaths or affirmations in the examination of any director, officer, agent or employee of a savings bank, or a service corporation or holding company thereof, or of any other person in relation to its affairs, transactions and conditions;

(c) May require the production of records, books, papers, contracts and other documents; and

(d) May order that improper entries be corrected on the books and records of a savings bank.

(2) The commissioner may issue subpoenas duces tecum.

(3) If a person fails to comply with a subpoena so issued by the commissioner, or a party or witness refuses to testify on any matters, a court of competent jurisdiction, on the application of the commissioner, shall compel compliance by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from such court or a refusal to testify in such court.

SOURCES: Laws, 1992, ch. 489, § 46; reenacted without change, Laws, 1997, ch. 364, § 46; reenacted without change, Laws, 2001, ch. 457, § 46, eff from and after July 1, 2001.

RESEARCH REFERENCES

Am Jur. 10 Am. Jur. 2d, Banks and Financial Institutions §§ 19 et seq.

§ 81-14-163. Test appraisals of collateral for loans; expense paid.

(1) The commissioner may direct the making of test appraisals of real estate and other collateral securing loans made by savings banks doing business in this state, employ competent appraisers, or prescribe a list from which competent appraisers may be selected, for the making of such appraisals by the commissioner, or any and all other acts incident to the making of such test appraisals.

(2) In lieu of such appraisals, the commissioner may accept an appraisal caused to be made by the insurer of accounts.

(3) The expense and cost of test appraisals made pursuant to this section shall be defrayed by the savings bank subjected to such test appraisals. Each savings bank doing business in this state shall pay all reasonable costs and expenses of such test appraisals when directed.

SOURCES: Laws, 1992, ch. 489, § 47; reenacted without change, Laws, 1997, ch. 364, § 47; reenacted without change, Laws, 2001, ch. 457, § 47, eff from and after July 1, 2001.

§ 81-14-165. Relationship of savings banks with department.

(1) Except as provided by subsection (3) of this section, a savings bank, or any director, officer, employee or representative thereof, shall not grant, directly or indirectly, to the commissioner or to any employee of the department, or to their spouses, any loan or gratuity.

(2) Neither the commissioner, nor any employee of the department, shall:

(a) Hold an office or position in any state savings bank, or exercise any right to vote on any state savings bank matter by reason of being a member of the savings bank;

(b) Be interested, directly or indirectly, in any savings bank organized under the laws of this state; or

(c) Undertake any indebtedness as a borrower, directly or indirectly, or act as endorser, surety or guarantor, or sell, or otherwise dispose of, any loan or investment to any savings bank organized under the laws of this state.

(3) Notwithstanding subsection (2) of this section, the commissioner, or any employee of the department, may be a deposit account holder, may receive earnings on such account and may receive a loan secured by the deposit account.

(4) If the commissioner, or any employee of the department, has any prohibited right or interest in a savings bank, either directly or indirectly, at the time of his appointment, he shall dispose of it within sixty (60) days after the date of his appointment or employment. If the commissioner, or any employee of the department, is indebted as a borrower, directly or indirectly, or is an endorser, surety or guarantor on a note at the time of his appointment or employment, he may continue in such capacity until such loan is paid off.

(5) If the commissioner, or any employee of the department, has a loan or other note acquired by a state savings bank through the secondary market, he may continue with the debt until such loan or note is paid off.

SOURCES: Laws, 1992, ch. 489, § 48; reenacted without change, Laws, 1997, ch. 364, § 48; reenacted without change, Laws, 2001, ch. 457, § 48, eff from and after July 1, 2001.

§ 81-14-167. Confidential information.

(1) The following records or information of the board, the commissioner, or the agent(s) of either, shall be confidential and shall not be disclosed:

(a) Information obtained or compiled in preparation of, or anticipation of, or during an examination, audit or investigation of any institution;

(b) Information reflecting the specific collateral given by a named borrower, the specific amount of stock owned by a named stockholder, or specific deposit accounts held by a named member or customer;

(c) Information obtained, prepared or compiled during or as a result of an examination, audit or investigation of any savings bank by an agency of the United States, if the records would be confidential under federal law or regulation;

(d) Information and reports submitted by savings banks to federal regulatory agencies, if the records or information would be confidential under federal law or regulation;

(e) Information and records regarding complaints from the public received by the department which concern savings banks when the complaint could result in an investigation, except to the management of those savings banks;

(f) Any other letters, reports, memoranda, recordings, charts or other documents or records which would disclose any information of which disclosure is prohibited in this subsection.

(2) A court of competent jurisdiction may order the disclosure of specific information.

(3) The information contained in an application shall be deemed to be public information. Disclosure shall not extend to the financial statement of the incorporators nor to any further information deemed by the commissioner to be confidential.

(4) Nothing in this section shall prevent the exchange of information relating to savings banks and the business thereof with the representatives of the agencies of this state, other states, or of the United States, or with reserve or insuring agencies for savings banks. The private business and affairs of an individual or company shall not be disclosed by any person employed by the department, any member of the board, or by any person with whom information is exchanged under the authority of this subsection.

(5) Any official or employee violating this section shall be liable to any person injured by disclosure of such confidential information for all damages sustained thereby.

SOURCES: Laws, 1992, ch. 489, § 49; reenacted without change, Laws, 1997, ch. 364, § 49; reenacted without change, Laws, 2001, ch. 457, § 49, eff from and after July 1, 2001.

Cross References — Entitlement to receive copy of call reports, see § 81-14-179.
Interstate Bank Branching Act, see §§ 81-23-1 et seq.

§ 81-14-169. Statement filed by savings bank; publishing requirement.

The commissioner shall call upon each state savings bank for the reports required in this section. Such calls shall be made by the commissioner in writing by letter or other similar means of written communications for the same dates and as often as calls are issued by the appropriate federal regulating authority for reports from federal savings banks. The commissioner shall prescribe the forms for such reports. The reports shall be sworn to by either the president, vice president or cashier of the savings bank making them, attested by not less than two (2) of the board of directors, and shall exhibit in detail, under appropriate heads, the total resources and total liabilities of the bank on the day specified by the commissioner. Savings banks shall transmit to the department such call reports within a time limitation established by regulation by the commissioner; however, such time limitation cannot exceed that set by the Federal Deposit Insurance Corporation for state insured savings banks. For any failure or delay in furnishing this report, the president, vice president or cashier of any such savings bank, so in default, and the members of the board of directors of the savings bank refusing to attest the report, shall be subject to an administrative fine, which may be imposed by the commissioner, of Fifty Dollars ($50.00) a day for each day while in such default.

SOURCES: Laws, 1992, ch. 489, § 50; Laws, 1996, ch. 400, § 34; reenacted without change, Laws, 1997, ch. 364, § 50; reenacted without change, Laws, 2001, ch. 457, § 50, eff from and after July 1, 2001.

§ 81-14-171. Annual audit requirement.

The commissioner shall require that every state savings bank have its affairs audited at least once a year. The commissioner shall review such audit within a reasonable time after its completion.

SOURCES: Laws, 1992, ch. 489, § 51; Laws, 1996, ch. 400, § 35; reenacted without change, Laws, 1997, ch. 364, § 51; reenacted without change, Laws, 2001, ch. 457, § 51, eff from and after July 1, 2001.

§ 81-14-173. Prohibited practices.

Any person who shall engage in any of the following acts shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined or imprisoned, or both, in the discretion of the court:

(a) Defamation: Making, publishing, disseminating or circulating any oral, written or printed statement regarding the financial condition of any savings bank which is false.

(b) False information and advertising: Making, publishing, disseminating, circulation or otherwise placing before the public in any publication, media, notice, pamphlet, letter, poster, or any other way, an advertisement, announcement or statement containing any assertion representation, or statement with respect to the savings bank business or with respect to any person in the conduct of the savings bank business which is untrue, deceptive or misleading.

SOURCES: Laws, 1992, ch. 489, § 52; reenacted without change, Laws, 1997, ch. 364, § 52; reenacted without change, Laws, 2001, ch. 457, § 52, eff from and after July 1, 2001.

§ 81-14-175. Appeal from final rule, regulation or order of commissioner or board.

Unless otherwise provided in this chapter, any interested person aggrieved by any rule, regulation or order of the commissioner and/or the board, as applicable, shall have the right, regardless of the amount involved, to appeal to the Circuit Court of the First Judicial District of Hinds County. However, if the appellant is an applicant for a charter, the appeal shall be taken to the circuit court of the county in which the proposed institution is domiciled; or if the appellant is seeking to establish a branch office, the appeal shall be taken to the circuit court of the county in which the proposed branch is located. Such appeal shall be taken and perfected as hereinafter provided, within thirty (30) days from the date of such final rule, regulation or order. The circuit court may affirm such rule, regulation or order, or remand for further proceedings as justice may require. All such appeals shall be taken and perfected, heard either in termtime or in vacation, and shall be heard and disposed of promptly by the court as a preference cause. In perfecting any appeal provided by this section, the provisions of law respecting notice to the reporter and the allowance of bills of exception, now or hereafter in force, and those provisions respecting appeals from the circuit court to supreme court shall be applicable. However, the reporter shall transcribe his notes and file the transcript of the record with the commissioner or board within thirty (30) days after approval of the appeal bond. Upon the filing with the commissioner or board of a petition for appeal to the circuit court, it shall be the duty of the commissioner or board, within sixty (60) days after approval of the appeal bond to file with the clerk of the circuit court to which the appeal is taken a copy of the petition for appeal, the rule, regulation or order appealed from, and the original and one (1) copy of the transcript of the record of proceedings in evidence before the commissioner or board. After the filing of such petition, the appeal shall be perfected by filing of bond in the sum of Five Hundred Dollars ($500.00) with two (2) sufficient sureties, or with a surety company qualified to do business in Mississippi as the surety, conditioned to pay the cost of such appeal. Such bond shall be approved by the commissioner or by the clerk of the court to which such appeal is taken. The perfection of an appeal shall not stay or suspend the operation of any rule, regulation or order of the commissioner or board, but the judge of such circuit court may award a writ of supersedeas to any rule, regulation or order of the commissioner or board after five (5) days' notice to the commissioner or board. Any order or judgment staying the operation of any rule, regulation or order of the commissioner or board shall contain a specific finding, based upon evidence submitted to the circuit judge and identified by reference thereto, that irreparable damage would result to the appellant if he is denied relief. Such stay shall not become effective until a supersedeas bond shall have been executed and filed with and approved by the clerk of the court payable to the state. The bond shall be in an amount fixed by the circuit judge and conditioned as said circuit judge may direct.

SOURCES: Laws, 1992, ch. 489, § 53; reenacted without change, Laws, 1997, ch. 364, § 53; reenacted without change, Laws, 2001, ch. 457, § 53, eff from and after July 1, 2001.

Cross References — Applicant for charter may appeal final decision of board, see § 81-14-69.

Plan of supervisory control of savings bank not to take effect for 30 days to allow filing of appeal pursuant to this section, see § 81-14-207.

§ 81-14-177. Credit allowed for savings banks; commissioner discretion.

In all examinations no savings bank shall be allowed credit in excess of its sound value for a note or security of which the principal and interest is over twelve (12) months past due; nor for any bond in excess of the real value thereof; nor for any stock of its own held more than twelve (12) months; nor for any unsecured overdrafts that may have existed for a greater period than thirty (30) days next preceding it, except that the period shall be ninety (90) days for unsecured overdrafts upon which interest is being charged if the savings bank has a written policy authorizing such overdrafts for not more than ninety (90) days. Only such overdrafts shall be considered as secure as are advanced against products or actual existing values evidenced by warehouse receipts or bills of lading, against bills of exchange drawn in good faith against actual existing values, or against funds on deposit by the depositor whose account is overdrawn, and who has pledged those funds as security for such overdraft, and in making up the statement of the condition of such savings bank any such item shall be charged off (but if desired a note shall be appended giving details thereof). But the discretion of the commissioner or examiner may be exercised in cases of estates in litigation or administration, and in pending suits, if the security affected thereby is ample, in the opinion of the commissioner or examiner making such examination.

SOURCES: Laws, 1996, ch. 400, § 40; reenacted without change, Laws, 1997, ch. 364, § 54; reenacted without change, Laws, 2001, ch. 457, § 54, eff from and after July 1, 2001.

§ 81-14-179. Commissioner to provide copy of call reports; failure or refusal; misdemeanor.

A copy of the call reports of any savings bank shall be furnished to any person or corporation requesting the same for a reasonable fee prescribed by the commissioner, which shall be collected by the commissioner and shall be paid into the department maintenance fund. If the commissioner fails or refuses to furnish copies of the report when so requested and tendered the proper fee; or if he fails to account for any such fees received by him; or if any person other than the commissioner, deputy commissioner, an examiner, or assistant furnishes any copy of such savings bank report to anyone, whether for a consideration or without consideration, such person shall be guilty of a misdemeanor and shall be fined not less than Fifty Dollars ($50.00) or be imprisoned not more than one (1) month in the county jail, or both. However, this section shall not be construed to prevent any officer of the savings bank from furnishing to anyone a statement of such savings bank.

SOURCES: Laws, 1996, ch. 400, § 41; reenacted without change, Laws, 1997, ch. 364, § 55; reenacted without change, Laws, 2001, ch. 457, § 55, eff from and after July 1, 2001.

Cross References — Confidential information, see § 81-14-167.

ARTICLE 5.

ENFORCEMENT.

SEC.

81-14-201. Cease and desist orders.
81-14-203. Civil penalties; state savings banks.
81-14-205. Civil penalties; directors, officers and employees.
81-14-207. Supervisory control.
81-14-209. Removal of directors, officers and employees.
81-14-211. Involuntary liquidation.
81-14-213. Judicial review.
81-14-215. Indemnity.
81-14-217. Cumulative penalties.
81-14-219. Emergency limitations.

§ 81-14-201. Cease and desist orders.

(1) If any person or savings bank is engaging in, or has engaged in, or is about to engage in, any unsafe or unsound practice, or unfair and discriminatory practice, in conducting the savings bank's business, or violation of any other law, rule, regulation, order or condition imposed in writing by the commissioner, the commissioner may issue a notice of charges to such person or institution. A notice of charges shall specify the acts alleged to sustain a cease and desist order, and state the time and place at which a hearing shall be held. A hearing before the commissioner on the charges shall be held no earlier than seven (7) days, and no later than fifteen (15) days, after issuance of the notice. The charged institution is entitled to a further extension of seven (7) days upon filing a request with the commissioner. The commissioner may also issue a notice of charges if he has reasonable grounds to believe that any person or savings bank is about to engage in any unsafe or unsound business practice, or any violation of this chapter, or any other law, rule, regulation or order. If, by a preponderance of the evidence, it is shown that any person or savings bank is engaged in, or has been engaged in, or is about to engage in, any unsafe or unsound business practice, or unfair and discriminatory practice or any violation of this chapter, or any other law, rule, regulation or order, a cease and desist order shall be issued which shall be permanently binding upon the person or institution until terminated by the commissioner.

(2) If any person or state savings bank is engaging in, has engaged in, or is about to engage in any unsafe or unsound practice, or unfair and discriminatory practice, in conducting the savings bank's business, or any violation of the act or of any other law, rules, regulation, order or condition imposed in writing by the commissioner, and the commissioner has determined that immediate corrective action is required, the commissioner may issue a temporary cease and desist order without prior notice. A temporary cease and desist order shall be effective immediately upon issuance for a period of fifteen (15) days, and may be extended once for a period of fifteen (15) days. Such an order shall state its duration on its face and the words "Temporary Cease and Desist Order." A hearing before the commissioner shall be held within the time that

the order remains effective, at which time a temporary order may be dissolved or made permanent.

SOURCES: Laws, 1992, ch. 489, § 54; Laws, 1994, ch. 622, § 151; Laws, 1996, ch. 400, § 30; reenacted without change, Laws, 1997, ch. 364, § 56; reenacted without change, Laws, 2001, ch. 457, § 56, eff from and after July 1, 2001.

Cross References — All penalties, fines and remedies provided by this article as cumulative, see § 81-14-217.

§ 81-14-203. Civil penalties; state savings banks.

(1) Except as otherwise provided in this article, any savings bank which is found to have violated any provision of this article may be ordered to pay a civil penalty not to exceed Twenty Thousand Dollars ($20,000.00). Any savings bank which is found to have violated or failed to comply with any cease and desist order issued under the authority of this article may be ordered to pay a civil penalty not to exceed Twenty Thousand Dollars ($20,000.00) for each day that the violation or failure to comply continues.

(2) To enforce the provisions of this section, the commissioner is authorized to assess such penalty and to appear in a court of competent jurisdiction and to move the court to order payment of the penalty. Prior to the assessment of the penalty, a hearing shall be held by the commissioner.

(3) Nothing in this section shall prevent anyone damaged by a state savings bank from bringing a separate cause of action in a court of competent jurisdiction.

SOURCES: Laws, 1992, ch. 489, § 55; reenacted without change, Laws, 1997, ch. 364, § 57; reenacted without change, Laws, 2001, ch. 457, § 57, eff from and after July 1, 2001.

Cross References — Deposit of penalties collected pursuant to this section, see § 81-14-157.

All penalties, fines and remedies provided by this article as cumulative, see § 81-14-217.

§ 81-14-205. Civil penalties; directors, officers and employees.

(1) Any person, whether a director, officer or employee, who is found to have violated any provision of this article, whether willfully, or as a result of gross negligence, gross incompetency or recklessness, may be ordered to pay a civil penalty not to exceed Five Thousand Dollars ($5,000.00) per violation. Any person who is found to have violated or failed to comply with any cease and desist order issued under the authority of this article may be ordered to pay a civil penalty not to exceed Five Thousand Dollars ($5,000.00) per violation for each day that the violation or failure to comply continues.

(2) To enforce the provisions of this section, the commissioner is authorized to assess such penalty, to appear in a court of competent jurisdiction and

to move the court to order payment of the penalty. Prior to the assessment of the penalty, a hearing shall be held by the commissioner.

(3) Nothing in this section shall prevent anyone damaged by a director, officer or employee of a state savings bank from bringing a separate cause of action in a court of competent jurisdiction.

SOURCES: Laws, 1992, ch. 489, § 56; reenacted without change, Laws, 1997, ch. 364, § 58; reenacted without change, Laws, 2001, ch. 457, § 58, eff from and after July 1, 2001.

Cross References — Deposit of penalties collected pursuant to this section, see § 81-14-157.

Indemnity for person fined or penalized for violating criminal provisions of this article prohibited, see § 81-14-215.

All penalties, fines and remedies provided by this article as cumulative, see § 81-14-217.

RESEARCH REFERENCES

Am Jur. 10 Am. Jur. 2d, Banks and Financial Institutions §§ 402 et seq.

§ 81-14-207. Supervisory control.

(1) Whenever the commissioner determines that a solvent savings bank is conducting its business in an unsafe or unsound manner, or in any fashion which threatens the financial integrity or sound operation of the savings bank, the commissioner may serve a notice of charges on the savings bank, requiring it to show why it should not be placed under supervisory control. Such notice of charges shall specify the grounds for supervisory control, and set the time and place for a hearing. A hearing before the commissioner pursuant to such notice shall be held within fifteen (15) days after issuance of the notice of charges.

(2) If, after the hearing provided above, the commissioner determines that supervisory control of the savings bank is necessary to protect the savings bank's members, customers, stockholders or creditors, or the general public, the commissioner shall issue an order taking supervisory control of the savings bank.

(3) If the order taking supervisory control becomes final, the commissioner may appoint an agent to supervise and monitor the operations of the savings bank during the period of supervisory control. During the period of supervisory control, the savings bank shall act in accordance with such instructions as may be given by the commissioner, directly or through his supervisory agent, and shall not fail to act, except when to do so would violate an outstanding cease and desist order.

(4) Within one hundred eighty (180) days of the date the order taking supervisory control becomes final, the commissioner shall issue an order approving a plan for the termination of supervisory control. The plan may provide for:

(a) The issuance by the savings bank of capital stock;

(b) The appointment of one or more officers and/or directors;

(c) The reorganization, merger or consolidation of the savings bank;

(d) The dissolution and liquidation of the savings bank;

(e) Other such measures as determined by the commissioner.

The order approving the plan shall not take effect until thirty (30) days after issuance during which time period an appeal may be filed in accordance with the provisions of Section 81-14-175.

(5) All costs of this proceeding shall be paid by the savings bank.

(6) For the purpose of this section, an order shall be deemed final if:

(a) No appeal is filed within the specific time allowed for the appeal; or

(b) All judicial appeals are exhausted.

(7) If a savings bank is insolvent, the provisions of Section 81-14-211 shall apply.

SOURCES: Laws, 1992, ch. 489, § 57; Laws, 1994, ch. 622, § 152; Laws, 1996, ch. 400, § 31; reenacted without change, Laws, 1997, ch. 364, § 59; reenacted without change, Laws, 2001, ch. 457, § 59, eff from and after July 1, 2001.

Cross References — All penalties, fines and remedies provided by this article as cumulative, see § 81-14-217.

RESEARCH REFERENCES

Am Jur. 10 Am. Jur. 2d, Banks and Financial Institutions §§ 1017, 1026 et seq.

§ 81-14-209. Removal of directors, officers and employees.

(1) If, in the commissioner's opinion, any director, officer or employee of any savings bank has participated in, or consented to, any violation of this chapter, or any other law, rule, regulation or order, or any unsafe or unsound business practice in the operation of any savings bank, or any insider loan not specifically authorized by or pursuant to this chapter, or any repeated violation of, or failure to comply with, any savings bank's bylaws, the commissioner may serve a written notice of charges upon such director, officer or employee and the savings bank, stating his intent to remove such director, officer or employee. Such notice shall specify the alleged conduct of such director, officer or employee and shall state the place for a hearing before the commissioner. A hearing shall be held no earlier than fifteen (15) days, but no later than thirty (30) days, after the notice of charges is served. If, after the hearing, the commissioner determines that the charges asserted have been proven by a preponderance of the evidence, the commissioner may issue an order removing the director, officer or employee in question. Such an order shall be effective upon issuance and may include the entire board of directors or all of the officers of the savings bank.

(2) If it is determined that any director, officer or employee of any savings bank has knowingly participated in, or consented to, any violation of this

chapter, or any other law, rule, regulation or order, or engaged in any unsafe or unsound business practice in the operation of any savings bank, or any repeated violation of, or failure to comply with, any savings bank's bylaws, and that as a result, a situation exists requiring immediate corrective action, the commissioner may issue an order temporarily removing such person or persons pending a hearing. Such an order shall state its duration on its face and the words "Temporary Order of Removal" and shall be effective upon issuance for a period of fifteen (15) days. Such order may be extended once for a period of fifteen (15) days. A hearing must be held within ten (10) days of the expiration of a temporary order, or any extension thereof, at which time a temporary order may be dissolved or converted to a permanent order.

(3) Any removal pursuant to subsection (1) or (2) of this section shall be effective in all respects as if such removal has been made by the board of directors and the members or stockholders of the savings bank in question.

(4) Without the prior written approval of the commissioner, no director, officer or employee permanently removed pursuant to this section shall be eligible to be elected, reelected or appointed to any position as a director, officer or employee of that savings bank, nor shall such director, officer or employee be eligible to be elected to or retain a position as a director, officer or employee of any other state savings bank.

SOURCES: Laws, 1992, ch. 489, § 58; Laws, 1994, ch. 622, § 153; reenacted without change, Laws, 1997, ch. 364, § 60; reenacted without change, Laws, 2001, ch. 457, § 60, eff from and after July 1, 2001.

Cross References — All penalties, fines and remedies provided by this article as cumulative, see § 81-14-217.

RESEARCH REFERENCES

Am Jur. 10 Am. Jur. 2d, Banks and Financial Institutions §§ 329 et seq., 476.

§ 81-14-211. Involuntary liquidation.

(1) The commissioner may take custody of the books, records and assets of every kind of any savings bank organized and operated under the provisions of this chapter for any of the purposes hereinafter enumerated if it reasonably appears from examinations or from reports made to the commissioner that:

(a) The directors, officers or liquidators have neglected, failed or refused to take such action which the commissioner may deem necessary for the protection of the savings bank, or have impeded or obstructed an examination; or

(b) The net worth of the savings bank is impaired to the extent that the realizable value of its assets is insufficient to pay in full its creditors and holders of deposit accounts; or

(c) The business of the savings bank is being conducted in a fraudulent, illegal or unsafe manner, or that the savings bank is in an unsafe or unsound condition to transact business; (any savings bank which, except as authorized in writing by the commissioner, fails to make full payment of any withdrawal when due is in an unsafe or unsound condition to transact business, notwithstanding such provisions of the certificate of incorporation or such statutes or regulations with respect to payment of withdrawals in event a savings bank does not pay all withdrawals in full); or

(d) The officers, directors or employees have assumed duties or performed acts in excess of those authorized by statute or regulation or charter, or without supplying the required bond; or

(e) The savings bank has experienced a substantial dissipation of assets or earnings due to any violation of statute or regulation, or due to any unsafe or unsound practice or practices; or

(f) The savings bank is insolvent, or is in imminent danger of insolvency, or has suspended its ordinary business transactions due to insufficient funds; or

(g) The savings bank is unable to continue operations.

(2) Unless the commissioner finds that such an emergency exists which may result in loss to members, deposit account holders, stockholders or creditors, and which requires that he take custody immediately, the commissioner shall first give written notice to the directors and officers specifying the conditions criticized and allowing a reasonable time for corrections before a receiver shall be appointed.

(3) The purpose for which the commissioner may take custody of a savings bank include, but are not limited to, examination or further examination, conservation of its assets, restoration of impaired capital, and the making of any reasonable or equitable adjustment deemed necessary by the commissioner under any plan of reorganization.

(4) If the commissioner, after taking custody of a savings bank, finds that one or more of the reasons for having taken custody continues to exist through the period of his custody with little or no likelihood of amelioration of the situation, then he shall appoint as receiver or co-receiver any qualified person, firm or corporation for the purpose of liquidation of the savings bank. Such receiver shall furnish bond in form, amount and with surety as the commissioner may require. The commissioner may appoint the institution's deposit account insurance corporation or its nominee as the receiver. Such insuring corporation shall be permitted to serve without posting bond.

(5) In the event the commissioner appoints a receiver for a savings bank, he shall mail a certified copy of the appointment order by certified mail to the address of the savings bank, as it appears on the records of the department, to any previous receiver or other legal custodian of the savings bank and to any court or other authority to which such previous receiver or other legal custodian is subject. Notice of such appointment may be published in a newspaper of general circulation in the county where the savings bank has its principal office.

(6) Whenever a receiver for a savings bank is appointed pursuant to subsection (4), the savings bank may within thirty (30) days thereafter bring

an action in the chancery court in the county in which the home office of the institution is located for an order to remove such receiver.

(7) The duly appointed and qualified receiver shall take possession promptly of such savings bank in accordance with the terms of the appointment by service of a certified copy of the commissioner's appointment order upon the savings bank at its principal office through the officer or employee who is present and appears to be in charge. Immediately upon taking possession of the savings bank, the receiver shall take possession and title of books, records and assets of the savings bank. The receiver, by operation of law and without any conveyance or other instrument, act or deed, shall succeed to all the rights, titles, powers and privileges of the savings bank, its members or stockholders, holders of deposit accounts, its officers and directors, and to the titles of the books, records and assets of any previous receiver or other legal custodian of the savings bank. Such members, stockholders, holders of deposit accounts, officers or directors shall not thereafter, except as hereinafter expressly provided, exercise any such rights, powers or privileges, or act in connection with any assets or property of any nature of the savings bank in receivership. The commissioner may at any time direct the receiver to return the savings bank to its previous or newly constituted management. The commissioner may provide for a meeting of the members or stockholders for any purpose, including the election of directors or an increase in the number of directors, or both, or the election of an entire new board of directors for any purpose, including the filling of vacancies on the board, the removal of officers and the election of new officers. Any such meeting of members or stockholders, or of directors, shall be supervised or conducted by a representative of the commission.

(8) A duly appointed and qualified receiver shall have authority to:

(a) Demand, sue for, collect, receive and take into his possession all the goods and chattels, rights and credits, monies and effects, lands and tenements, books, papers, choses in action, bills, notes and property of every description of the savings bank;

(b) Foreclose mortgages, deeds of trust and other liens executed to the savings bank to the extent the savings bank would have had such right;

(c) Institute suits for the recovery of any estate, property, damages or demands existing in favor of the savings bank, and shall, upon his own application, be substituted as plaintiff in the place of the savings bank in any suit or proceeding pending at the time of his appointment;

(d) Sell, convey and assign all the property rights and interest owned by the savings bank;

(e) Appoint agents to serve at his pleasure;

(f) Examine and investigate papers and persons, and pass on claims as provided in the regulations prescribed by the commissioner;

(g) Make and carry out agreements with the insuring corporation or with any other financial institution for the payment or assumption of the savings bank's liabilities, in whole or in part, and to sell, convey, transfer, pledge or assign assets as security or otherwise and to make guarantees in connection therewith; and

(h) Perform all other acts which might be done by the employees, officers and directors; such powers shall be continued in effect until liquidation and dissolution, or until return of the savings bank to its prior or newly constituted management.

(9) A receiver may at any time during the receivership and prior to final liquidation be removed and a replacement appointed by the commissioner.

(10) The commissioner may determine that such liquidation proceedings should be discontinued. He may then remove the receiver and restore or grant all the rights, powers and privileges of its members and stockholders, customers, employees, officers and directors, or newly constituted management. The return of a savings bank to its management or to a newly constituted management from the possession of a receiver shall, by operation of law and without any conveyance or other instrument, act or deed, vest in the savings bank the title to all property held by the receiver in his capacity as a receiver for the savings bank.

(11) Claims against a state savings bank in receivership shall have the following order of priority for payment:

(a) Costs, expenses and debts of the savings bank incurred on or after the date of the appointment of the receiver, including compensation for the receiver;

(b) Claims of holders of deposit accounts;

(c) Claims of general creditors;

(d) Claims of stockholders of a stock savings bank;

(e) All remaining assets to members and stockholders in an amount proportionate to their holdings as of the date of the appointment of the receiver.

(12) All claims of each class of priority described in subsection (11) shall be paid in full so long as sufficient assets remain. Members of the class for which the receiver cannot make payment in full because assets will be depleted shall be paid an amount proportionate to their total claims.

(13) The commissioner shall have the authority to direct the payment of claims for which no provision is herein made, and may direct the payment or claims within a class. The commissioner shall have the authority to promulgate rules and regulations governing the payment of claims by an institution in receivership.

(14) When all assets of the savings bank have been fully liquidated, all claims and expenses have been paid or settled and the receiver has recommended a final distribution, the dissolution of the savings bank in receivership shall be accomplished in the following manner:

(a) The receiver shall file with the commissioner a detailed report, in a form to be prescribed by the commissioner, of his acts and proposed final distribution and dissolution.

(b) Upon the commissioner's approval of the final report of the receiver, the receiver shall provide such notice, and thereafter shall make such final distribution, in such manner as the commissioner may direct.

(c) When a final distribution has been made, except as to any unclaimed funds, the receiver shall deposit such unclaimed funds with the commissioner and shall deliver to the commissioner all books and records of the dissolved institution.

(d) Upon final dissolution of the savings bank in receivership or at such time the receiver is relieved of his duties, the commissioner shall cause an audit to be conducted, during which the receiver shall be available to assist. The accounts of the receiver shall then be ruled upon by the commissioner and, if approved, the receiver shall thereupon be given a final and complete discharge and release.

SOURCES: Laws, 1992, ch. 489, § 59; Laws, 1994, ch. 622, § 154; reenacted without change, Laws, 1997, ch. 364, § 61; reenacted without change, Laws, 2001, ch. 457, § 61, eff from and after July 1, 2001.

Cross References — Supervisory control of insolvent bank, see § 81-14-207.

All penalties, fines and remedies provided by this article as cumulative, see § 81-14-217.

RESEARCH REFERENCES

Am Jur. 10 Am. Jur. 2d, Banks and Financial Institutions §§ 1017, 1026 et seq.

§ 81-14-213. Judicial review.

Any person or state savings bank against whom a cease and desist order is issued or a fine is imposed may have such order or fine reviewed by a court of competent jurisdiction. Except as otherwise provided, an appeal may be made only within thirty (30) days of the issuance of the order or the imposition of the fine, whichever is later.

SOURCES: Laws, 1992, ch. 489, § 60; reenacted without change, Laws, 1997, ch. 364, § 62; reenacted without change, Laws, 2001, ch. 457, § 62, eff from and after July 1, 2001.

Cross References — Deposit of penalties pending appeal as provided in this section, see § 81-14-157.

§ 81-14-215. Indemnity.

No person who is fined or penalized for a violation of any criminal provision of this article shall be reimbursed or indemnified in any fashion by the savings bank for such fine or penalty.

SOURCES: Laws, 1992, ch. 489, § 61; reenacted without change, Laws, 1997, ch. 364, § 63; reenacted without change, Laws, 2001, ch. 457, § 63, eff from and after July 1, 2001.

§ 81-14-217. Cumulative penalties.

All penalties, fines and remedies provided by this article shall be cumulative.

SOURCES: Laws, 1992, ch. 489, § 62; reenacted without change, Laws, 1997, ch. 364, § 64; reenacted without change, Laws, 2001, ch. 457, § 64, eff from and after July 1, 2001.

Cross References — Deposit and use of all funds and revenues collected under provisions of this chapter, see § 81-14-157.

§ 81-14-219. Emergency limitations.

The commissioner, with the approval of the Governor, may impose a limitation upon the amounts withdrawable or payable from deposit accounts of savings banks during any specifically defined period when such limitation is in the public interest and welfare.

SOURCES: Laws, 1992, ch. 489, § 63; reenacted without change, Laws, 1997, ch. 364, § 65; reenacted without change, Laws, 2001, ch. 457, § 65, eff from and after July 1, 2001.

ARTICLE 6.

CORPORATE ADMINISTRATION.

SEC.
81-14-251. Membership of a mutual institution.
81-14-253. Directors.
81-14-255. Conduct of directors and officers.
81-14-257. Amendments to charter of incorporation and bylaws.
81-14-259. Voting rights.
81-14-261. Annual meetings notice required.
81-14-263. Special meetings; notice required.
81-14-265. Quorum.
81-14-267. Bonding.

§ 81-14-251. Membership of a mutual institution.

The membership of a mutual state savings bank shall consist of:

(a) Any person who holds deposit accounts in a savings bank; or

(b) Any person who borrows funds and becomes obligated on a loan from the savings bank, for such time as the loan remains unpaid, or the borrower remains liable to the savings bank for the payment thereof.

Any person in his own right, or in a trust or other fiduciary capacity, or any partnership, association, corporation, political subdivision or public or government unit or entity may become a member of a mutual savings bank. Members shall possess such voting rights and other rights as provided by a savings bank's certificate of incorporation and bylaws. Such members shall be considered the owners of a mutual savings bank.

SOURCES: Laws, 1992, ch. 489, § 64; reenacted without change, Laws, 1997, ch. 364, § 66; reenacted without change, Laws, 2001, ch. 457, § 66, eff from and after July 1, 2001.

RESEARCH REFERENCES

Am Jur. 10 Am. Jur. 2d, Banks and Financial Institutions §§ 314 et seq.

§ 81-14-253. Directors.

(1) The directors of a mutual savings bank shall be elected by the members at an annual meeting, held pursuant to the terms of Section 81-14-261, for such terms as the bylaws of the savings bank may provide. Director's terms may be specified in the certificate of incorporation. Voting for directors by deposit account holders shall be weighted according to the total amount of deposit accounts held by such members, subject to any maximum number of votes per member which a savings bank may choose to prescribe in its bylaws. Voting rights for borrowers shall be as prescribed in the bylaws. Such requirements shall be fully prescribed in a detailed manner in the bylaws of the savings bank.

(2) Each director of a state savings bank shall, in his own name, own capital stock in, or have a deposit relationship with the state savings bank on an unencumbered basis as follows:

(a) For stock savings banks under Fifty Million Dollars ($50,000,000.00) in assets, stock ownership in the institution or its holding company of Two Thousand Five Hundred Dollars ($2,500.00) in market value at time of purchase; or

(b) For mutual savings banks under Fifty Million Dollars ($50,000,000.00) in assets, a Two Thousand Five Hundred Dollar ($2,500.00) deposit relationship; or

(c) For stock savings banks over Fifty Million Dollars ($50,000,000.00) in assets, stock ownership in the institution or its holding company of Five Thousand Dollars ($5,000.00) in market value at the time of purchase; or

(d) For mutual savings banks over Fifty Million Dollars ($50,000,000.00) in assets, a Five Thousand Dollar ($5,000.00) deposit relationship. For savings banks that cross the Fifty Million Dollar ($50,000,000.00) threshold, the commissioner shall allow a reasonable period for the directors to comply with the ownership interest requirement.

(3) Every state savings bank shall have no less than five (5) directors, two-thirds (⅔) of which shall be residents of this state. In addition, not more than two (2) of the directors may be members of the same immediate family, nor may there be more than one (1) director who is an attorney with a particular law firm.

(4) A majority of the directors must not be salaried officers or employees of the savings bank or of any subsidiary or, except in the case of a savings bank having eighty percent (80%) or more of any class of voting shares owned by a holding company, any holding company affiliate thereof.

SOURCES: Laws, 1992, ch. 489, § 65; Laws, 1996, ch. 400, § 36; reenacted without change, Laws, 1997, ch. 364, § 67; reenacted without change, Laws, 2001, ch. 457, § 67, eff from and after July 1, 2001.

RESEARCH REFERENCES

Am Jur. 10 Am. Jur. 2d, Banks and Financial Institutions §§ 329 et seq., 476.

§ 81-14-255. Conduct of directors and officers.

(1) Directors and officers possess a fiduciary relationship with the savings bank which they serve, and shall not engage or participate, directly or indirectly, in any business or transaction conducted on behalf of or involving such savings bank, unless: (a) the business or transactions are conducted in good faith and are honest, fair and reasonable to the savings bank; (b) a full disclosure of the business or transaction and the nature of the director's or officer's interest is made to the board of directors; and (c) the business or transaction is approved in good faith by the board of directors with any interested director abstaining. The approval of the transaction shall be recorded in the minutes. Any profits inuring to the officer or director shall not be at the expense of the savings bank. The business or transaction shall not represent a breach of the officer's or director's fiduciary duty and shall not be fraudulent or illegal. Notwithstanding any other provisions of this section, the commissioner may require the disclosure by directors, officers and employees of their personal interest, directly or indirectly, in any business or transaction on behalf of or involving the savings bank and of their control of, or active participation in, enterprises having activities related to the business of the savings bank.

(2) The following restrictions governing the conduct of directors and officers are specified, but that specification does not excuse those persons from the observance of any other aspect of the general fiduciary duty owed by them to the savings bank which they serve:

(a) An officer or director of a mutual savings bank shall not hold office or status as a director or officer of another mutual savings bank subject to this chapter.

(b) A director shall receive as remuneration only reasonable fees for services as a director or as a member of a committee of directors. A director who is also an officer or employee of the savings bank may receive compensation for service as an officer or employee.

(c) A director or officer shall not have any interest, direct or indirect, in the purchase at less than its face value of any evidence of a savings account deposit or other indebtedness issued by the savings bank.

(d) A savings bank, or director or officer thereof, shall not directly or indirectly require, as a condition to the granting of any loans or the extension of any other service by the savings bank or its affiliates, that the borrower or any other person undertake a contract of insurance or any other agreement or understanding with respect to the direct or indirect furnishing of any other goods or services with any specific company, agency or individual.

(e) An officer or director acting as proxy for a member of a mutual savings bank shall not exercise, transfer or delegate that right in any consideration of a private benefit or advantage, direct or indirect, nor surrender control or pass his office to any other for any consideration of a private benefit or advantage, direct or indirect. The voting rights of members shall not be the subject of sale or similar transaction, either directly or indirectly. Any officer or director who violates the provisions of this paragraph shall be held accountable to the savings bank for an increment.

(f) A director or officer shall not solicit, accept or agree to accept, directly or indirectly, from any person other than the savings bank any gratuity, compensation or other personal benefit for any action taken by the savings bank or for endeavoring to procure any action by the savings bank.

(g) Subject to the approval of the commissioner, a savings bank's bylaws may provide for reasonable indemnification to its officers, directors and employees in connection with the faithful performance of their duties for the savings bank. The commissioner may promulgate model indemnification provisions and may consider provisions available under applicable state and federal statutes.

SOURCES: Laws, 1992, ch. 489, § 66; reenacted without change, Laws, 1997, ch. 364, § 68; reenacted without change, Laws, 2001, ch. 457, § 68, eff from and after July 1, 2001.

RESEARCH REFERENCES

Am Jur. 10 Am. Jur. 2d, Banks and Financial Institutions §§ 329 et seq., 476.

§ 81-14-257. Amendments to charter of incorporation and bylaws.

Any amendments to the charter of incorporation or bylaws of a savings bank shall be certified by the appropriate corporation official and submitted to the commissioner for his approval before they may become effective.

SOURCES: Laws, 1992, ch. 489, § 67; reenacted without change, Laws, 1997, ch. 364, § 69; reenacted without change, Laws, 2001, ch. 457, § 69, eff from and after July 1, 2001.

RESEARCH REFERENCES

Am Jur. 10 Am. Jur. 2d, Banks and Financial Institutions §§ 176 et seq.

§ 81-14-259. Voting rights.

Voting rights in the affairs of a state savings bank may be exercised by members and stockholders by voting either in person or by proxy. The commissioner shall promulgate rules and regulations governing forms of proxies, holders of proxies and proxy solicitation.

SOURCES: Laws, 1992, ch. 489, § 68; reenacted without change, Laws, 1997, ch. 364, § 70; reenacted without change, Laws, 2001, ch. 457, § 70, eff from and after July 1, 2001.

RESEARCH REFERENCES

Am Jur. 10 Am. Jur. 2d, Banks and Financial Institutions §§ 314 et seq.

§ 81-14-261. Annual meetings notice required.

(1) Each savings bank shall hold an annual meeting of its members or stockholders. The annual meeting shall be held at a time and place as provided in the bylaws or determined by the board of directors.

(2) The board of directors of a mutual savings bank shall publish once a week for two (2) weeks preceding such meeting, in a newspaper of general circulation in the county where such savings bank has its principal office, a notice of the annual meeting. Such notice shall be signed by the savings bank's secretary and shall state the time and place where it is to be held. In addition to the foregoing notice, each savings bank shall disseminate additional notice of any annual meeting to all members entering the premises of any office or branch of the savings bank in the regular course of business by posting therein, in full view of the public and such members, one or more conspicuous signs or placards announcing the time, date and place of the meeting and the availability of additional information. Printed matter shall be freely available to such members containing any information as prescribed in rules and regulations issued by the commissioner. Such additional notice shall be given at any time within the period of sixty (60) days prior to and fourteen (14) days prior to the meeting and shall continue through the time of the meeting.

(3) The board of directors of a stock savings bank shall cause a written or printed notice signed by the savings bank's secretary, and stating the time and place of the annual meeting to be delivered not less than ten (10) days nor more than fifty (50) days before the date of the meeting, either personally or by mail to each stockholder of record entitled to vote at the meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States Postal Service addressed to the stockholder at his address as it appears on the records of the corporation, with postage thereon prepaid.

SOURCES: Laws, 1992, ch. 489, § 69; reenacted without change, Laws, 1997, ch. 364, § 71; reenacted without change, Laws, 2001, ch. 457, § 71, eff from and after July 1, 2001.

Cross References — Election of directors of mutual savings bank to be held at annual meeting held pursuant to this section, see § 81-14-253.

Notice of special meeting of members or stockholders to be given as provided in this section, see § 81-14-263.

RESEARCH REFERENCES

Am Jur. 10 Am. Jur. 2d, Banks and Financial Institutions §§ 314 et seq.

§ 81-14-263. Special meetings; notice required.

Special meetings of members or stockholders of a savings bank may be called by the president or the board of directors or by such other officers or persons as provided in the charter or bylaws of the savings bank. Notice of any special meeting of members or stockholders shall be given in the same manner as provided for annual meetings under Section 81-14-261.

SOURCES: Laws, 1992, ch. 489, § 70; reenacted without change, Laws, 1997, ch. 364, § 72; reenacted without change, Laws, 2001, ch. 457, § 72, eff from and after July 1, 2001.

§ 81-14-265. Quorum.

Unless otherwise provided in the savings bank's charter or bylaws, fifty (50) holders of deposit accounts in a mutual savings bank, or fifty (50) stockholders or a majority of shares eligible to vote in a stock savings bank, present in person or represented by proxy, shall constitute a quorum at any annual or special meeting.

SOURCES: Laws, 1992, ch. 489, § 71; reenacted without change, Laws, 1997, ch. 364, § 73; reenacted without change, Laws, 2001, ch. 457, § 73, eff from and after July 1, 2001.

§ 81-14-267. Bonding.

(1) A savings bank shall maintain a blanket indemnity bond of at least a minimum amount as prescribed by the commissioner.

(2) A savings bank which employs collection agents, who for any reason are not covered by the bond as herein required, shall provide for the bonding of each agent in an amount equal to at least twice the average monthly collections of such agent. Such agents shall be required to make settlement with the institution at least once monthly. No such coverage by bond will be required of any agent which is an institution insured by the Federal Deposit Insurance Corporation. The amount and form of such bonds and the sufficiency of the surety thereon shall be approved by the board of directors and the commissioner before such bonds are valid. All such bonds shall provide that a cancellation thereof, either by the surety or by the insured, shall not become effective until thirty (30) days' notice in writing has been given to the commissioner.

SOURCES: Laws, 1992, ch. 489, § 72; reenacted without change, Laws, 1997, ch. 364, § 74; reenacted without change, Laws, 2001, ch. 457, § 74, eff from and after July 1, 2001.

ARTICLE 7.

LOANS AND INVESTMENTS.

SEC.	
81-14-301.	Investment in loans.
81-14-303.	Other investments.
81-14-305.	Prohibited security.
81-14-307.	Loan conditioned on certain transactions prohibited.
81-14-309.	Loan expense and fees.
81-14-311.	Methods of loan repayment.
81-14-313.	Insider loans.
81-14-315.	Rule-making power of commissioner.
81-14-317.	Nonconforming loans and investments.
81-14-319.	Limitation on loans to one (1) borrower.
81-14-321.	General parity provision.

§ 81-14-301. Investment in loans.

Subject to the regulations of the commissioner, a savings bank may loan funds as follows:

(a) On the security of deposit accounts, but no such loan shall exceed the withdrawal value of the pledged account.

(b) On the security of real estate:

(i) Of a value, determined in accordance with regulations adopted by the commissioner, sufficient to provide good and ample security for the loan;

(ii) With a fee simple title or a leasehold title having a duration of not less than ten (10) years beyond the maturity of the loan;

(iii) With the title established by evidence of title as is consistent with sound lending practices in the locality;

(iv) With the security interest in real estate evidenced by an appropriate written instrument and the loan evidenced by a note, bond or similar written instrument; a loan on the security of the whole of the beneficial interest in a land trust satisfies the requirements of this section if the title to the land is held by a corporate trustee and if the real estate held in the land trust meets the other requirements of this section.

(c) For the purpose of repair, improvement, rehabilitation, furnishing or equipment of real estate.

(d) Through the participation of loans that are of a type that the savings bank would be authorized to make in accordance with this section and its bylaws. Subject to regulations by the commissioner, participants shall be limited to federally insured financial institutions and their subsidiaries, and instruments of, or corporations owned wholly or in part by, the United States or this state.

(e) Through the purchase of loans, wholly or in part, that at the time of purchase, the savings bank could make in accordance with this section and its bylaws.

(f) Through the purchase of installment contracts for the sale of real estate and title thereto that is subject to the contracts, but in each instance only if the savings bank, at the time of purchase, could make a mortgage loan of the same amount for the same length of time on the security of real estate.

(g) Through loans guaranteed or insured, wholly or in part, by the United States or any of its instrumentalities.

(h) Subject to regulations adopted by the commissioner, through secured or unsecured loans for business, corporate, commercial or agricultural purposes; provided that the total of all loans granted under this paragraph shall not exceed fifteen percent (15%) of the savings bank's total assets.

(i) For the purpose of mobile home financing subject, however, to the regulation of the commissioner.

(j) Through loans secured by the cash surrender value of any life insurance policy or any collateral that would be a legal investment under the terms of this chapter if made by a savings bank.

(k) Any provisions of this chapter to the contrary, notwithstanding and subject to the commissioner's regulations, any savings bank may make any loans or investment or engage in any activity that it could make or engage in if it were organized under state law as a savings and loan association or under federal law as a federal savings and loan association or federal savings bank.

(*l*) A savings bank may issue letters of credit or other similar arrangements only as provided by regulation of the commissioner with regard to aggregate amounts permitted, take out commitments for standby letters of credit, underlying documentation and underwriting, legal limitations on loans of the savings bank, control and subsidiary records, and other procedures deemed necessary by the commissioner.

(m) For the purpose of secured and unsecured financing of personal and family credits, subject to the regulations of the commissioner.

(n) For the purpose of financing primary, secondary, undergraduate or postgraduate education.

(o) Through revolving lines of credit on the security of a first or junior lien on the borrower's personal residence, based primarily on the borrower's equity, the proceeds of which may be used for any purpose.

(p) As secured or unsecured credit to cover the payment of checks, drafts or other funds transfer orders in excess of the available balance of an account on which they are drawn, subject to the regulations of the commissioner.

SOURCES: Laws, 1992, ch. 489, § 73; reenacted without change, Laws, 1997, ch. 364, § 75; reenacted without change, Laws, 2001, ch. 457, § 75, eff from and after July 1, 2001.

RESEARCH REFERENCES

Am Jur. 10 Am. Jur. 2d, Banks and Financial Institutions §§ 516 et seq; §§ 613 et seq., 910.

§ 81-14-303. Other investments.

If the board of directors determines at any time that funds are available in excess of the demands and needs for loans, maturities and withdrawals, a savings bank may invest funds as provided in this section:

(a) In demand, time or savings deposits or accounts, withdrawable accounts, or other insured obligations of any financial institution, the accounts of which are insured by a federal agency.

(b) In obligations of, or obligations that are fully guaranteed by the United States, and in stocks or obligations of any Federal Reserve Bank, Federal Home Loan Bank, the Student Loan Market Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Deposit Insurance Corporation, or any other agency of the United States.

(c) In bonds or other direct obligations of, or guaranteed as to principal and interest by, this state.

(d) In bonds or other evidences of indebtedness that are direct general obligations of any unit of local government of this state, or other evidences of indebtedness that are payable from revenues or earnings specifically pledged therefor of a unit of local government, but in no event shall the total amount of the securities of any one (1) maker or obligor exceed fifteen percent (15%) of the savings bank's total capital, nor shall the aggregate amount of investments under this paragraph exceed fifteen percent (15%) of the savings bank's total assets.

(e) In real estate for the following purposes:

(i) A savings bank may invest in real property and equipment and in leasehold improvements to rented facilities necessary for the conduct of its business and in real property to be held for its future use. A savings bank may invest in an office building or buildings and appurtenances for the purpose of the transaction of the savings bank's business. No such investment may be made without the prior written approval of the commissioner if the total amount of such investments exceeds fifty percent (50%) of the savings bank's net worth. Facilities, furniture and fixtures leased for the purpose set forth in this section shall not be included in this limitation.

(ii) With the prior written consent of the commissioner, a savings bank may invest in the initial purchase and development, or the purchase or commitment to purchase after completion, of home sites and housing for sale or rent, including, but not limited to: (A) projects for the reconstruction, rehabilitation or rebuilding of residential properties to meet the minimum standards of health and occupancy prescribed by appropriate local authorities; (B) the provision of accommodations for retail stores and other community services that are reasonably incident to such housing; or (C) in the shares of a corporation that owns one or more of those projects and that is wholly owned by one or more financial institutions whose investments are regulated by the laws of this state or of the United States. In no event shall the total investment in any one (1) project exceed fifteen percent (15%) of the savings bank's net worth, nor shall the aggregate investment under this paragraph exceed fifty percent (50%) of its net worth.

(iii) No savings bank may make an investment unless it is in compliance with the net worth requirements of this chapter and with the net worth maintenance requirements of its insurer of deposit accounts. The commissioner shall approve the investment only if the savings bank shows:

(A) That the savings bank has adequate assets available for the investment;

(B) That the proposed investment does not exceed the reasonable market value of the property or interest therein as determined in accordance with the appraisal requirements of this chapter; and

(C) That all other requirements of this section have been met.

Nothing contained in this paragraph prohibits a savings bank from developing or building on land acquired by it under any other provision of this chapter nor from completing the construction of buildings in accordance with any construction loan contract where the borrower has failed to comply with the terms of the contract.

(f) In stocks or obligations of business development corporations chartered by this state or by the United States or an agency thereof, but in no event shall the aggregate amount of stock exceed two and one-half percent (2-½%) of the savings bank's total capital or Two Hundred Fifty Thousand Dollars ($250,000.00), whichever is greater.

(g) In obligations of urban renewal investment corporations chartered under the laws of this state, or the United States, or in certificates of beneficial interest of urban renewal investment trusts, but in no event shall the aggregate amount of the stock, obligations or beneficial interest certificates of any one (1) maker exceed two and one-half percent (2-½%) of the savings bank's total capital, nor shall the aggregate amount of investments under this paragraph exceed fifteen percent (15%) of its total capital.

(h) In commercial paper. As used in this section, the term "commercial paper" means short-term obligations having a maturity ranging from two (2) to two hundred seventy (270) days issued by banks, corporations or other borrowers. Investments in commercial paper under this section must be in securities rated in one (1) of the two (2) highest categories by at least two (2) nationally recognized investment rating services.

(i) Purchase of stock in insurance companies. Notwithstanding any provision of this chapter to the contrary, a savings bank may purchase shares of, or otherwise acquire equity interest in, insurance companies and insurance holding companies organized to provide insurance for savings institutions and corporations and individuals affiliated with savings institutions; provided, however, that ownership of equity interest is a prerequisite to obtaining director's, officer's and blanket bond insurance through the company or companies. The commissioner may promulgate regulations concerning the size of each savings bank's investment and manner of holding those investments.

(j) Subject to the regulation of the commissioner, in equity or debt securities or instruments of a service corporation that is a subsidiary of the savings bank.

(k) Through advances of federal funds to designated depositories, provided that the advances are made on the condition that they be repaid on the next business day following the date on which the advance is made. For the purpose of this paragraph, the term "federal funds" means funds that a savings bank has on deposit at a depository that are exchangeable for funds on deposit at a federal reserve bank; the term "business day" means any day on which the savings bank, the depository and the federal reserve bank where the funds are on deposit are all open for general business.

(*l*) In marketable investment securities, but in no event shall the total amount of those securities of any one (1) maker or obligor exceed five percent (5%) of the savings bank's total capital, nor shall the aggregate amount of investments under this section exceed fifteen percent (15%) of total capital. As used in this section, the term "marketable investment securities" does not include stock, but means investment grade marketable obligations evidencing indebtedness of any person in the form of bonds, notes or debentures commonly known as investment securities, and of a type customarily sold on recognized exchanges or traded over the counter. As used in this section, the term "investment grade" means being rated in one (1) of the two (2) highest categories by at least two (2) nationally recognized investment rating services. As used in this section, the term "person" means an individual corporation, partnership, joint venture, trust, estate or unincorporated association.

SOURCES: Laws, 1992, ch. 489, § 74; reenacted without change, Laws, 1997, ch. 364, § 76; reenacted without change, Laws, 2001, ch. 457, § 76, eff from and after July 1, 2001.

RESEARCH REFERENCES

Am Jur. 10 Am. Jur. 2d, Banks and Financial Institutions §§ 516 et seq., 613 et seq.

§ 81-14-305. Prohibited security.

No savings bank, or subsidiary thereof, may accept its own capital stock or its own mutual capital certificates as security for any loan made by such savings bank. Further, no loans of any type shall be made, either directly or indirectly, for purposes relating to its own stock.

SOURCES: Laws, 1992, ch. 489, § 75; reenacted without change, Laws, 1997, ch. 364, § 77; reenacted without change, Laws, 2001, ch. 457, § 77, eff from and after July 1, 2001.

RESEARCH REFERENCES

Am Jur. 10 Am. Jur. 2d, Banks §§ 54, 496, 610 et seq., 1086, 1087.

§ 81-14-307. Loan conditioned on certain transactions prohibited.

(1) No savings bank, or subsidiary thereof, shall require as a condition of making a loan that the borrower contract with any specific person or organization for particular goods or services.

(2) A savings bank, or subsidiary thereof, must notify borrowers at or prior to the loan commitment of their right to select the attorney or law firm rendering legal services in connection with the loan, and the person or organization rendering insurance services in connection with the loan. Notwithstanding the notice requirement, a savings bank, or subsidiary thereof, may refuse to make any loan if it believes on reasonable grounds that the services provided by the person or organization selected by the borrower will afford insufficient protection to such institution or subsidiary.

(3) A savings bank, or subsidiary thereof, may require borrowers to reimburse such savings bank for legal services rendered by its own attorney only when the fee is limited to legal services required by the making of such loan and the borrower has selected the savings bank's attorney in the manner provided by subsection (2) of this section.

SOURCES: Laws, 1992, ch. 489, § 76; reenacted without change, Laws, 1997, ch. 364, § 78; reenacted without change, Laws, 2001, ch. 457, § 78, eff from and after July 1, 2001.

RESEARCH REFERENCES

Am Jur. 10 Am. Jur. 2d, Banks and Financial Institutions §§ 989, 995-997.

§ 81-14-309. Loan expense and fees.

(1) A savings bank may require borrowers to pay all reasonable expenses incurred by the savings bank in connection with making, closing, disbursing, extending, adjusting or renewing loans.

(2) A savings bank may require a borrower to pay reasonable charges for late payments made during the course of repayment of a loan. Such payments may be levied only upon such terms and conditions as fixed by the savings

bank's board of directors and agreed to by the borrower in the loan contract. Such payments shall not be considered interest under the usury laws of this state.

SOURCES: Laws, 1992, ch. 489, § 77; reenacted without change, Laws, 1997, ch. 364, § 79; reenacted without change, Laws, 2001, ch. 457, § 79, eff from and after July 1, 2001.

RESEARCH REFERENCES

Am Jur. 10 Am. Jur. 2d, Banks and Financial Institutions §§ 989, 995-997

§ 81-14-311. Methods of loan repayment.

Subject to such rules and regulations as the commissioner may prescribe, a savings bank shall agree in writing with borrowers as to the method or plan by which an indebtedness shall be repaid.

SOURCES: Laws, 1992, ch. 489, § 78; reenacted without change, Laws, 1997, ch. 364, § 80; reenacted without change, Laws, 2001, ch. 457, § 80, eff from and after July 1, 2001.

RESEARCH REFERENCES

Am Jur. 10 Am. Jur. 2d, Banks and Financial Institutions §§ 989, 995-997.

§ 81-14-313. Insider loans.

Loans aggregating fifteen percent (15%) of the unimpaired capital and unimpaired surplus may be made by any state savings bank to any director or executive officer thereof, as defined in Regulation O promulgated by the Board of Governors of the Federal Reserve System, less existing direct and indirect liabilities thereto, upon affirmative approval of a majority of all directors spread on the minutes of a directors' meeting held before such loan is made, provided, such loan is made on substantially the same terms and conditions extended to other borrowers for comparable transactions. Any state savings bank may lend to any such director or executive officer thereof, upon affirmative approval of a majority of all directors spread on the minutes of a directors' meeting held before such loan is made, not more than twenty percent (20%) of the unimpaired capital and unimpaired surplus of the savings bank, less the amount of existing direct and indirect liabilities, when se cured; or when the portion thereof in excess of any amount loaned under the first provision hereof is secured by obligations of the United States government, the State of Mississippi, and the levee districts, counties, road districts, school districts, and municipalities of the State of Mississippi, obligations of any other state of the United States and other bonds of recognized character and standing, which are the subject of daily newspaper market quotations, provided such loan shall not exceed eighty percent (80%) of the market or par value (whichever is less) of the bonds or obligations offered as security. Any state savings bank may lend to any executive officer or director thereof upon affirmative approval of a majority of all directors spread on the minutes of a directors' meeting held before such loan is made, such amount as is safe and proper, when secured by warehouse receipts or shippers' order bills of lading representing actual existing values, provided the amount loaned shall not exceed eighty percent (80%) of the market value of the commodities representing the actual existing values, and loans of this nature shall be made payable on demand so that the security held therefor may be sold on any date and the proceeds thereof applied to the payment of the loan. However, a savings bank's board of directors may, as shown in its minutes, give to a savings bank officer the authority to make secured or unsecured loans to an executive officer or director of such savings bank, without receiving the board's prior approval, in an amount that, when aggregated with the amount of all other extensions of credit to that person and to all related interests of that person, does not exceed the greater of Twenty-five Thousand Dollars ($25,000.00) or five percent (5%) of the savings bank's unimpaired capital and unimpaired surplus. However, no state savings bank shall extend credit to any director or executive officer thereof, in an amount that, when aggregated with all other extensions of credit to that person and to all related interests of that person, exceeds Five Hundred Thousand Dollars ($500,000.00) without documented prior affirmative approval of a majority of its directors.

Loans and discounts by a state savings bank to a director or executive officer thereof secured in full by funds on deposit in time or savings accounts with the lending savings bank to the credit of the borrower shall not be restricted to the fifteen percent (15%) or twenty percent (20%) limitations herein prescribed.

The limitations of this section shall not apply where an executive officer or director shall bona fide purchase from the savings bank at a reasonable price real or personal property acquired by the savings bank in payment of debts due the savings bank, provided such transactions are approved by a majority of the board of directors, such approval to be shown in their minutes; and, in cases where loans are made by branch offices, the sum total of loans made by any branch or branches and its parent savings bank to such executive officer or director shall be computed as against the total capital stock and surplus of the parent savings bank and its branch or branches. Loans heretofore made to executive officers or directors may be renewed or extended if in accord with sound banking practice.

SOURCES: Laws, 1992, ch. 489, § 79; Laws, 1996, ch. 400, § 37; reenacted without change, Laws, 1997, ch. 364, § 81; reenacted without change, Laws, 2001, ch. 457, § 81, eff from and after July 1, 2001.

RESEARCH REFERENCES

Am Jur. 10 Am. Jur. 2d, Banks and Financial Institutions §§ 989, 995-997.

§ 81-14-315. Rule-making power of commissioner.

The commissioner shall, from time to time, promulgate such rules and regulations in respect to loans permitted to be made by state savings banks as necessary to assure that such loans are keeping with sound lending practices and to promote the purpose of this chapter.

SOURCES: Laws, 1992, ch. 489, § 80; reenacted without change, Laws, 1997, ch. 364, § 82; reenacted without change, Laws, 2001, ch. 457, § 82, eff from and after July 1, 2001.

§ 81-14-317. Nonconforming loans and investments.

Unless otherwise provided, every loan or other investment made in violation of this chapter shall be due and payable according to its terms and the obligation thereof shall not be impaired; provided, however, that such violation consists only of the lending of an excessive sum on authorized security or of investing in an unauthorized investment.

SOURCES: Laws, 1992, ch. 489, § 81; reenacted without change, Laws, 1997, ch. 364, § 83; reenacted without change, Laws, 2001, ch. 457, § 83, eff from and after July 1, 2001.

§ 81-14-319. Limitation on loans to one (1) borrower.

The liability to a savings bank by a person, company, corporation or firm for money loaned, including in the liability of such person, company or firm, where a partnership, the liabilities of the several members thereof, shall not exceed twenty percent (20%) of the aggregate unimpaired capital and unimpaired surplus of said savings bank.

The following shall not be restricted to or considered as coming within the limitations of twenty percent (20%) herein prescribed:

(a) Loans and discounts secured by warehouse receipts or shippers' order bills of lading representing actual existing values, provided the amount of such loans and discounts shall not exceed eighty-five percent (85%) of the market value of the commodities representing the actual existing values.

(b) Loans and discounts secured by bonds, certificates or notes constituting direct obligations of the United States government, or bonds fully guaranteed by the United States government, or by full faith and credit obligations of the State of Mississippi; provided, however, the commissioner shall from time to time determine and fix the maximum percentage of the par value of all such securities that may be loaned.

(c) Loans and discounts to the extent that they are secured or covered by guaranties, or by commitments, or agreements to take over or purchase the same, made by any federal reserve bank, or by the United States, or any department, bureau, board, commission or establishment of the United States, including any corporation wholly owned directly or indirectly by the United States; provided that such guaranties, agreements or commitments are unconditional and are to be performed by payment within sixty (60) days after demand; provided, further, that the commissioner is hereby authorized to define the terms herein used and may by regulation control the making of loans under this paragraph (c).

(d) Loans and discounts secured in full by funds on deposit in time or savings accounts with the lending savings bank to the credit of the borrower.

Any officer or director who shall approve or make loans prohibited in this section shall be liable individually for the full amount of the principal and interest of any such loan. If the commissioner shall discover, in any examination of any open savings bank that there is a loss on any loan made in violation of this section, he shall make demand of all directors and officers approving or making such loan for payment of the entire unpaid balance on any such loan.

Like demand shall be made and suit brought by the receiver of any savings bank in liquidation. Provided, however, this section shall not apply to loans to the State of Mississippi, or to any political subdivision thereof, nor to any levee district.

SOURCES: Laws, 1992, ch. 489, § 82; Laws, 1996, ch. 400, § 38; reenacted without change, Laws, 1997, ch. 364, § 84; reenacted without change, Laws, 2001, ch. 457, § 84, eff from and after July 1, 2001.

RESEARCH REFERENCES

Am Jur. 10 Am. Jur. 2d, Banks and Financial Institutions §§ 989, 995-997.

§ 81-14-321. General parity provision.

State savings banks shall have and possess the rights, powers, privileges, immunities, duties and obligations of thrift institutions organized and operating under the laws of this state or the federal government as may be prescribed by the board by general regulation under the circumstances and conditions set out therein. In the event of a conflict between the provisions of this paragraph and any other provision of this chapter, the provisions of this paragraph shall control.

SOURCES: Laws, 1992, ch. 489, § 83; Laws, 1996, ch. 338, § 1; reenacted without change, Laws, 1997, ch. 364, § 85; reenacted without change, Laws, 2001, ch. 457, § 85, eff from and after July 1, 2001.

ARTICLE 8.

OPERATIONS.

SEC.
81-14-351. Generally accepted accounting principles.
81-14-353. Liquidity.
81-14-355. Net worth maintenance requirement.
81-14-357. Deposit accounts.
81-14-359. Joint accounts.

81-14-361. Accounts of administrators, executors, guardians, trustees and other fiduciaries.
81-14-363. Accounts payable at death.
81-14-365. Collection of processing fee for returned checks.
81-14-367. Right of setoff on deposit account.
81-14-369. Savings accounts issued to minors or persons under disability; payment of withdrawals; powers of parent or guardian; withdrawals on death of holder.
81-14-371. Deposit accounts as deposit of securities.
81-14-373. New account books.
81-14-375. Transfer of deposit accounts.
81-14-377. Authority of power of attorney.
81-14-379. Adverse claims to accounts.
81-14-381. Accounts of deceased nonresidents.
81-14-383. Payments to successors without administration.
81-14-385. Savings accounts as legal investments and as security for bonds.
81-14-387. Power to borrow money.
81-14-389. Authority to join federal reserve bank.

§ 81-14-351. Generally accepted accounting principles.

Savings banks shall maintain their books and records in accordance with generally accepted accounting principles.

SOURCES: Laws, 1992, ch. 489, § 84; reenacted without change, Laws, 1997, ch. 364, § 86; reenacted without change, Laws, 2001, ch. 457, § 86, eff from and after July 1, 2001.

RESEARCH REFERENCES

Am Jur. 10 Am. Jur. 2d, Banks and Financial Institutions §§ 283, 492, 531-535, 595-599.

§ 81-14-353. Liquidity.

Savings banks shall maintain cash and readily marketable investments in an amount that may be established in the rules and regulations of the commissioner, but such amount shall not be less than ten percent (10%) of the assets of the savings bank. Upon receipt of a duly certified copy of a resolution by the board of directors of any savings bank requesting a temporary suspension, the commissioner may suspend the liquidity requirement for a period not longer than six (6) months.

SOURCES: Laws, 1992, ch. 489, § 85; reenacted without change, Laws, 1997, ch. 364, § 87; reenacted without change, Laws, 2001, ch. 457, § 87, eff from and after July 1, 2001.

RESEARCH REFERENCES

Am Jur. 10 Am. Jur. 2d, Banks and Financial Institutions §§ 283, 492, 496, 531-535, 595-599, 610, 611.

§ 81-14-355. Net worth maintenance requirement.

Each savings bank shall maintain an adequate net worth appropriate for the conduct of its business and the protection of its savings account holders. The net worth adequacy of a savings bank shall be determined by the commissioner on a regular basis, but not less than one (1) time per year after evaluating the character of management, the quality of assets, history of earnings and the retention thereof, the potential volatility of the deposit structure and the institution's capacity to furnish the broadest service to the public. A written report of such finding and determination shall be made and filed by the commissioner.

SOURCES: Laws, 1992, ch. 489, § 86; reenacted without change, Laws, 1997, ch. 364, § 88; reenacted without change, Laws, 2001, ch. 457, § 88, eff from and after July 1, 2001.

RESEARCH REFERENCES

Am Jur. 10 Am. Jur. 2d, Banks and Financial Institutions §§ 496, 610, 611.

§ 81-14-357. Deposit accounts.

(1) Every savings bank shall be authorized to solicit deposits from any person, natural or corporate, except as restricted or limited by law, or by such regulations as the commissioner may prescribe.

(2) Savings banks may receive deposits of funds upon such terms as the contract of deposit shall provide to establish methods of withdrawals.

SOURCES: Laws, 1992, ch. 489, § 87; reenacted without change, Laws, 1997, ch. 364, § 89; reenacted without change, Laws, 2001, ch. 457, § 89, eff from and after July 1, 2001.

RESEARCH REFERENCES

Am Jur. 10 Am. Jur. 2d, Banks and Financial Institutions §§ 697, 700, 712.

§ 81-14-359. Joint accounts.

(1) Accounts may be in the name of two (2) or more persons, whether minor or adult, in such form that the money in the accounts are payable to either adult, or their survivors, and such money due under such accounts, and all additions thereto, shall be the property of such persons as joint tenants with the right of survivorship. The money due under such accounts may be paid to,

or on the order of, any one of such persons during his lifetime or to, or on the order of, any one of the survivors of such persons. The opening of the account in such form shall be conclusive evidence with regard to the liability of the savings bank of the intention of all of the parties to the account to vest title to money due under the account and the additions thereto in such survivor or survivors. By written instructions given to the savings bank by all parties to the account, the signatures of more than one (1) of such persons during their lifetime, or of more than one (1) of the survivors after the death of any one of them, may be required for withdrawal, in which case the savings bank shall pay the money in the account only in accordance with such instructions. However, no such instructions shall limit the right of the survivor or survivors to receive the money in the account. By written agreement with the savings bank, any person may create a joint account with other persons as joint tenants with the right of survivorship and such agreement may be signed only by the persons creating the account.

(2) The savings bank, unless instructed in writing to the contrary, may loan money to any one or more persons constituting a single membership or account as joint tenants with the right of survivorship, and any person authorized to make withdrawals as provided in this section may pledge, hypothecate or assign all, or any part of, the money due, or to become due, under such account. Any such pledge, hypothecation or assignment, or any increase to, or withdrawal from, the account shall not destroy the joint tenancy with the right of survivorship.

(3) Payment of all or any of the money in such account, as provided in this section, shall discharge the savings bank from liability with respect to the money so paid, prior to receipt by the savings bank of a court order. After receipt of such court order, a savings bank may refuse, without liability, to honor any withdrawal on the account pending determination of the rights of the parties. No savings bank paying any survivor in accordance with the provisions of this section shall thereby be liable for any estate, inheritance or succession taxes which may be owed to this state.

SOURCES: Laws, 1992, ch. 489, § 88; reenacted without change, Laws, 1997, ch. 364, § 90; reenacted without change, Laws, 2001, ch. 457, § 90, eff from and after July 1, 2001.

RESEARCH REFERENCES

Am Jur. 10 Am. Jur. 2d, Banks and Financial Institutions §§ 697, 700, 712.

§ 81-14-361. Accounts of administrators, executors, guardians, trustees and other fiduciaries.

Any savings bank may accept accounts in the name of any administrator, executor, guardian, trustee or other fiduciary in trust for a named beneficiary or beneficiaries. Such fiduciary shall have the authority to vote as a member of the savings bank as if any membership account were held absolutely, and to make payments upon, and withdraw from, any such account in whole or in part. The withdrawal value of any such account, or other rights relating thereto, may be paid or delivered, in whole or in part, to such fiduciary without regard to any notice as long as such fiduciary is living. The payment or delivery to any such fiduciary or a receipt of acquittance signed by any such fiduciary to whom any such payment or any such delivery or rights is made shall be valid and sufficient release and discharge of any savings bank for the payment or delivery so made. Whenever a person holding an account in a fiduciary capacity dies and no written notice of the revocation or termination of the trust relationship has been given to a savings bank and the savings bank has no notice of any other disposition of the trust estate, the withdrawal value of such account, or other rights relating thereto, may at the option of a savings bank be paid or delivered, in whole or in part, to the beneficiary or beneficiaries of such trust. Whenever an account is opened by any person describing himself as trustee for another and there is no further notice of the existence and terms of a legal and valid trust, then such description shall be given in writing to such savings bank. In the event of the death of the person so described as trustee, the withdrawal value of such account, or any part thereof, may be paid to the person for whom the account was thus stated to have been opened. Such account, and all additions thereto, shall be the property of such person, unless prior to payment the trust agreement is presented to the savings bank showing a contrary interest. When made in accord with this section, the payment or delivery to any such beneficiary, beneficiaries or designated person, or a receipt or acquittance signed by any such beneficiary, beneficiaries or designated person for any such payment or delivery shall be a valid and sufficient release and discharge of a savings bank for the payment or delivery so made. Trust accounts permitted by this chapter shall not be required to be acknowledged and recorded. When an account is opened in a form described in this section, the right set forth in Section 81-14-363 shall apply. No savings bank paying any beneficiary in accordance with the provisions of this section shall thereby be liable for any estate, inheritance or succession taxes which may be owed to this state.

SOURCES: Laws, 1992, ch. 489, § 89; reenacted without change, Laws, 1997, ch. 364, § 91; reenacted without change, Laws, 2001, ch. 457, § 91, eff from and after July 1, 2001.

RESEARCH REFERENCES

Am Jur. 10 Am. Jur. 2d, Banks and Financial Institutions §§ 697, 700, 712.

§ 81-14-363. Accounts payable at death.

(1) An account in a savings bank may be opened by any person or persons with directions to make such account payable upon his or their death to the named beneficiary or beneficiaries. When an account is so opened, the savings bank shall pay any money to the person or persons opening such account

during his or their lifetime in the same manner as if the account were in the sole name or names of such person or persons.

(2) If the named beneficiary or one (1) of the named beneficiaries survive the death of the person opening such an account and the beneficiary or all of the beneficiaries so named are sixteen (16) years of age or over at the death of such person, the savings bank shall pay the money to the credit of the account, less all proper setoffs and charges, to the named beneficiary or beneficiaries or upon his or their order, as hereinafter provided. Such payment by the savings bank shall be valid, notwithstanding any lack of legal age of the named beneficiary or beneficiaries. However, where such an account is opened or subsequently held by more than one (1) person, the death of one (1) of such persons shall not terminate the account and the account shall continue as to the surviving person or persons and the named beneficiary or beneficiaries subject to the provisions of subsection (3).

(3) If the named beneficiary or all of the named beneficiaries survive the death of the person or persons opening such an account and are under sixteen (16) years of age at such time, the savings bank shall pay the money to the credit of the account, less all proper setoffs and charges:

(a) When or after the named beneficiary becomes sixteen (16) years of age, to the named beneficiary or upon his order; or

(b) When more than one (1) beneficiary is named, the savings bank shall pay to each beneficiary so named his proportionate interest in such account as each severally becomes sixteen (16) years of age; or

(c) To the legal guardian of the named beneficiary, wherever appointed and qualified, or where more than one (1) beneficiary is named, the savings bank shall pay such beneficiary's proportionate interest in such account to his legal guardian wherever and whenever appointed and qualified; or

(d) In the event no guardian is appointed and qualified, payment may be made in accordance with the provisions of Section 93-13-211 et seq., Mississippi Code of 1972, in situations to which such sections are applicable.

(4) Where the death of the person or persons opening such an account terminates the account under the provisions of subsections (2) and (3) of this section and where one or more of the named beneficiaries are under sixteen (16) years of age and the remainder of the named beneficiaries are sixteen (16) years of age or over, the savings bank shall pay the money to the credit of the trust, less all proper setoffs and charges, to:

(a) The named beneficiaries sixteen (16) years of age or over at the time of termination of said account pursuant to subsection (2) of this section; and

(b) The named beneficiaries under sixteen (16) years of age at the time of termination of said account pursuant to subsection (3) of this section.

(5) Where such account is opened or subsequently held by more than one (1) person, the savings bank in the absence of any written instructions to the contrary, consented to by the savings bank, shall accept payments made to such account and may pay any money to the credit of such account from time to time to, or pursuant to the order of, either or any of such persons during their life or lives in the same manner as if the account were in the sole name of either of such persons.

(6) When a person or persons opens an account in a savings bank in the form set forth in subsection (1) of this section, and makes a payment or payments to such account, or causes a payment or payments to be made to such account, such person or persons shall be conclusively presumed to intend to vest in the named beneficiary or beneficiaries a present beneficial interest in such payments made, and in the money to the credit of the account from time to time, to the end that, if the named beneficiary or beneficiaries survive the person or persons opening such an account, all the right and title of the person or persons opening such an account in and to the money to the credit of the account at the death of such person or persons, less all proper setoffs and charges, shall at such death, vest solely and indefeasibly in the named beneficiary or beneficiaries subject to the conditions and limitations of subsection (3).

(7) If the named beneficiary predeceases the person opening such an account, the present beneficial interest presumed to be vested in the named beneficiary pursuant to subsection (6) of this section shall terminate at the death of the named beneficiary. In such case, the personal representatives of the named beneficiary, and all others claiming through or under the named beneficiary, shall have no right in or title to the money to the credit of the account, and the savings bank shall pay such money, less all proper setoffs and charges, to the person opening such an account, or pursuant to his order, in the same manner as if the account were in the sole name of the person opening such an account; provided, however, where such an account names more than one (1) beneficiary, the death of one (1) of the beneficiaries so named shall not terminate the account and the account shall continue as to the surviving beneficiary or beneficiaries subject to the provisions of subsection (3) o f this section.

(8) A savings bank which makes any payment pursuant to subsection (3) of this section, prior to service upon the savings bank of an order of court restraining such payment shall, to the extent of each payment so made, be released from all claims of the person or persons opening such an account, the named beneficiary or beneficiaries, their legal representatives, and all others claiming through or under them.

(9) When an account is opened in a form described in subsection (1) of this section, the right of the named beneficiary or beneficiaries to be vested with sole and indefeasible title to the money to the credit of the account on the death of the person or persons opening such an account shall not be denied, abridged or in anyway affected because such right has not been created by a writing executed in accordance with the law of this state prescribing the requirements to effect a valid testamentary disposition of property.

SOURCES: Laws, 1992, ch. 489, § 90; reenacted without change, Laws, 1997, ch. 364, § 92; reenacted without change, Laws, 2001, ch. 457, § 92, eff from and after July 1, 2001.

Cross References — Rights set forth in this section applicable to accounts of administrators, executors, guardians, trustees and other fiduciaries, see § 81-14-361.

RESEARCH REFERENCES

Am Jur. 10 Am. Jur. 2d, Banks and Financial Institutions §§ 761 et seq.

§ 81-14-365. Collection of processing fee for returned checks.

Notwithstanding any other provision of law, a processing fee may be charged and collected by any savings bank for checks on which payment has been refused by the payor depository institution. A savings bank may also collect such fee for checks drawn on that savings bank with respect to an account with insufficient funds.

SOURCES: Laws, 1992, ch. 489, § 91; reenacted without change, Laws, 1997, ch. 364, § 93; reenacted without change, Laws, 2001, ch. 457, § 93, eff from and after July 1, 2001.

RESEARCH REFERENCES

Am Jur. 10 Am. Jur. 2d, Banks and Financial Institutions §§ 73, 768, 782, 810 et seq., 922.

§ 81-14-367. Right of setoff on deposit account.

(1) A savings bank shall have a right of setoff, without further agreement or pledge, upon all deposit accounts owned by any member or customer to whom or upon whose behalf the savings bank has made an unsecured advance of money by loans. Upon default in the repayment of satisfaction thereof, the savings bank may cancel on its books all or any part of the deposit accounts owned by such member or customer and apply the value of such accounts in payment of such obligation.

(2) A savings bank which exercises the right of setoff provided in this section shall first give a thirty-day notice to the member or customer that such right will be exercised. Such accounts may be held or frozen, with no withdrawals permitted, during the thirty-day notice period. Such accounts may not be canceled and the value thereof may not be applied to pay such obligation until the thirty-day period has expired without the member or customer having cured the default on the obligation. The amount of any member's or customer's interest in a joint account or other account held in the names of more than one (1) person shall be subject to the right of setoff provided in this section.

(3) If a savings bank shall proceed in good faith as provided in this section, but it is later determined that the savings bank was not entitled to have held or set off funds, then the savings bank's sole obligation shall be to return the funds to the member's or customer's account, together with interest at the rate that would have applied if the account had not been held or set off. The savings bank shall not otherwise be liable for any costs or damages. This section is not

exclusive, but shall be in addition to contract, common law and other rights of setoff. Such other rights shall not be governed in any fashion by this section.

SOURCES: Laws, 1992, ch. 489, § 92; reenacted without change, Laws, 1997, ch. 364, § 94; reenacted without change, Laws, 2001, ch. 457, § 94, eff from and after July 1, 2001.

RESEARCH REFERENCES

Am Jur. 10 Am. Jur. 2d, Banks and Financial Institutions §§ 842 et seq.

§ 81-14-369. Savings accounts issued to minors or persons under disability; payment of withdrawals; powers of parent or guardian; withdrawals on death of holder.

A savings bank and any federal savings bank may issue savings accounts to any minor or other person under disability as the sole and absolute owner of such savings account. Such savings bank may receive payments by or for such owner, pay withdrawals, accept pledges to the savings bank, and act in any other manner with respect to such account on the written instruction of such savings account holder in accord with this chapter. Any payment or delivery of rights to any minor or other person under a disability, or a receipt or acquittance signed by a minor or other person under a disability, who holds a savings account, shall be a valid and sufficient release of such savings bank for any payment so made or delivery of rights to such minor or person. The receipt, acquittance, pledge or other action required by the savings bank to be taken by such minor or person shall be binding upon such minor or person as if he were of full age and legal capacity. The parent or guardian of such minor or person shall not in his capacity as parent or guardian have the power to attach or to transfer any savings account issued to, or in the name of, such minor or person; provided, however, that in the event of the death of such minor or person, the receipt or acquittance of either parent, a person standing in loco parentis, guardian or conservator of such minor or person shall be a valid and sufficient discharge of such savings bank for any sum not exceeding One Thousand Dollars ($1,000.00), unless the minor or person has given written notice to the savings bank not to accept the signature of such person.

SOURCES: Laws, 1992, ch. 489, § 93; reenacted without change, Laws, 1997, ch. 364, § 95; reenacted without change, Laws, 2001, ch. 457, § 95, eff from and after July 1, 2001.

RESEARCH REFERENCES

Am Jur. 10 Am. Jur. 2d, Banks and Financial Institutions §§ 761 et seq.

§ 81-14-371. Deposit accounts as deposit of securities.

Notwithstanding any restrictions or limitations contained in any law of this state, the deposit accounts of any state savings bank or of any federal savings bank having its principal office in this state, may be accepted by any agency, department or official of this state in any case wherein such agency, department or official acting in its or his official capacity requires that securities be deposited with such agency, department or official.

SOURCES: Laws, 1992, ch. 489, § 94; reenacted without change, Laws, 1997, ch. 364, § 96; reenacted without change, Laws, 2001, ch. 457, § 96, eff from and after July 1, 2001.

RESEARCH REFERENCES

Am Jur. 10 Am. Jur. 2d, Banks and Financial Institutions §§ 643, 644, 730 et seq.

§ 81-14-373. New account books.

Upon the filing with a savings bank by the holder of records as shown by the books of the savings banks, or by his legal representative, of an affidavit to the effect that the account book, certificate or other evidence of ownership of his savings account with the savings bank has been lost or destroyed, and that such account book or certificate has not been pledged or assigned in whole or in part, such savings bank shall issue a new account book or certificate in the name of the holder of record. Such savings bank shall in no way be liable thereafter for the original account book or certificates, unless the board of directors requires a bond in an amount sufficient to indemnify the savings bank against any loss which might result from the issuance of such new account book or certificate.

SOURCES: Laws, 1992, ch. 489, § 95; reenacted without change, Laws, 1997, ch. 364, § 97; reenacted without change, Laws, 2001, ch. 457, § 97, eff from and after July 1, 2001.

§ 81-14-375. Transfer of deposit accounts.

The owner of a deposit account may transfer his rights therein absolutely or conditionally to any other person eligible to hold such rights, but such transfer may be made on the books of the savings bank and accompanied by the proper application for transfer by the transferor and transferee. Such transferor and transferee shall accept such account subject to the terms and conditions of the account contract, the bylaws of the savings bank, the provisions of its certificate of incorporation, and all rules and regulations of the commissioner. Notwithstanding the effectiveness of such a transfer between the parties thereto, the savings bank may treat the holder of record of a deposit account as the owner thereof for all purposes, including payment and voting, until such transfer and assignment has been recorded by the savings bank.

SOURCES: Laws, 1992, ch. 489, § 96; reenacted without change, Laws, 1997, ch. 364, § 98; reenacted without change, Laws, 2001, ch. 457, § 98, eff from and after July 1, 2001.

§ 81-14-377. Authority of power of attorney.

A savings bank may continue to recognize the authority of an individual holding a power of attorney in writing to manage or to make withdrawals, either in whole or in part, from the deposit account of a customer or member until it receives written or actual notice of death, or of adjudication of incompetency of such member, or revocation of the authority of such individual holding such power of attorney. Payment by the savings bank to an individual holding a power of attorney prior to receipt of such notice shall be a total discharge of the savings bank's obligation as to the amount so paid.

SOURCES: Laws, 1992, ch. 489, § 97; reenacted without change, Laws, 1997, ch. 364, § 99; reenacted without change, Laws, 2001, ch. 457, § 99, eff from and after July 1, 2001.

§ 81-14-379. Adverse claims to accounts.

Notice to any savings bank doing business in this state of an adverse claim to an account on its books in the name of any savings account holder shall not cause the savings bank to recognize such adverse claimant, unless: (a) such adverse claimant either procures a restraining order, injunction or other appropriate process against the savings bank from a court of competent jurisdiction wherein the savings account holder, in whose name the account appears, is made a party and served with summons; or (b) such adverse claimant executes to the savings bank, in form and with sureties acceptable to it, a bond indemnifying it from any and all liability, loss, damage, costs and expenses for and on the account of the payment of such adverse claim.

SOURCES: Laws, 1992, ch. 489, § 98; reenacted without change, Laws, 1997, ch. 364, § 100; reenacted without change, Laws, 2001, ch. 457, § 100, eff from and after July 1, 2001.

§ 81-14-381. Accounts of deceased nonresidents.

When an account is held in any savings bank by a person residing in another state or country, the account, or any part thereof, not in excess of Two Thousand Five Hundred Dollars ($2,500.00), may be paid to the administrator or executor appointed in the state or country where the account holder resides at the time of death; provided, however, that such administrator or executor has furnished the savings bank with (a) authenticated copies of his letters and of the order of the court which issued the letters to him authorizing him to collect, receive and remove the personal estate, and (b) an affidavit by the administrator or executor stating that to his knowledge no letters are then outstanding in this state and no petition for letters by an heir, legatee, devisee or creditor of the decedent is pending on the estate in this state, and that there are no creditors of the estate in this state. Upon payment or delivery to such representative after receipt of the affidavit and authenticated copies, the savings bank is released and discharged to the same extent as if the payment or delivery had been made to a legally qualified resident executor or administrator. Such savings bank is not required to see to the application or disposition of the property. No action at law or in equity shall be maintained against the savings bank for payment made in accordance with the above provisions.

SOURCES: Laws, 1992, ch. 489, § 99; reenacted without change, Laws, 1997, ch. 364, § 101; reenacted without change, Laws, 2001, ch. 457, § 101, eff from and after July 1, 2001.

§ 81-14-383. Payments to successors without administration.

Any savings bank may pay to the successor of a deceased depositor, as defined in Section 91-7-322(2), without necessity of administration, any sum to the credit of the deceased not exceeding Twelve Thousand Five Hundred Dollars ($12,500.00) upon affidavit that the deceased died leaving no will and testament and bond signed by each of the successors guaranteeing payment of any lawful debts of the deceased to the extent of that withdrawal. The receipt of acquittance of the person or persons so paid shall be a valid and sufficient release and discharge to the savings bank against all other persons and claimants for any payment so made; however, the bond is made available to any creditor for suit against the makers of the bond.

SOURCES: Laws, 1992, ch. 489, § 100; Laws, 1995, ch. 380, § 3; reenacted without change, Laws, 1997, ch. 364, § 102; reenacted and amended, Laws, 2001, ch. 457, § 102; Laws, 2003, ch. 394, § 2, eff from and after July 1, 2003.

Joint Legislative Committee Note — Section 102 of ch. 457, Laws of 2001, effective from and after July 1, 2001 (approved March 23, 2001), amended this section. Section 3 of ch. 458, Laws of 2001, effective from and after July 1, 2001 (approved March 23, 2001), also amended this section. As set out above, this section reflects the language of Section 102 of ch. 457, Laws of 2001, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the sections are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Cross References — Payment of indebtedness or delivery of personal property of decedent to decedent's successor, see § 91-7-322.

§ 81-14-385. Savings accounts as legal investments and as security for bonds.

(1) Administrators, executors, custodians, guardians, trustees, pension funds and other fiduciaries of every kind and nature, insurance companies, business and manufacturing companies, banks, credit unions and all other

types of financial institutions, charitable, educational and eleemosynary institutions and organizations hereby are specifically authorized and empowered to invest funds held by them, without any order of any court, in savings accounts of savings banks which are under state supervision, and in accounts of insured savings banks. Such investments shall be deemed and held to be legal investments for such funds. With respect to investments by custodians, savings banks hereby are deemed to be qualified institutions within the meaning of that term as used in the Uniform Gifts to Minors Law of this state.

(2) The provisions of this section are supplemental to any and all other laws relating to and declaring what shall be legal investments for the persons, fiduciaries, corporations, organizations and officials referred to in this section, and the laws relating to the deposit of securities and the making and filing of bonds for any purpose.

SOURCES: Laws, 1992, ch. 489, § 101; reenacted without change, Laws, 1997, ch. 364, § 103; reenacted without change, Laws, 2001, ch. 457, § 103, eff from and after July 1, 2001.

§ 81-14-387. Power to borrow money.

A savings bank may borrow up to twenty-five percent (25%) of its savings liability and net worth for lending purposes; a savings bank may borrow an additional twenty-five percent (25%) of its savings liability and net worth for the purpose of making loans guaranteed by the Federal Housing Administration, a private mortgage guaranty insurance company licensed to do business in this state, or by the Veterans Administration; a savings bank may borrow up to fifty percent (50%) of its savings liability and net worth to pay withdrawals. Borrowing of additional amounts for purchase or construction of a home office or branch office is authorized, but only with approval of the commissioner. Subsequent reduction of savings liability and net worth shall not in any way affect outstanding obligations, but shall be reported to the commissioner and steps taken to comply within a reasonable time. The directors may pledge or authorize the officers to pledge any assets of the saving s bank to secure any loans herein permitted. For the purpose of this paragraph, use of savings accounts in the savings bank shall not be considered borrowing.

SOURCES: Laws, 1992, ch. 489, § 102; Laws, 1996, ch. 400, § 39; reenacted without change, Laws, 1997, ch. 364, § 104; reenacted without change, Laws, 2001, ch. 457, § 104, eff from and after July 1, 2001.

§ 81-14-389. Authority to join federal reserve bank.

Any state savings bank shall have the power to subscribe to the capital stock and become a member of a federal reserve bank. Any such savings bank shall continue to be subject to the supervision and examination required by the laws of this state, except that the Federal Reserve Board shall have the right, if it deems necessary, to make examinations. The commissioner may disclose to the Federal Reserve Board, or to the examiners duly appointed by it, all information in reference to the affairs of any savings bank which has become, or desires to become, a member of a federal reserve bank.

SOURCES: Laws, 1992, ch. 489, § 103; reenacted without change, Laws, 1997, ch. 364, § 105; reenacted without change, Laws, 2001, ch. 457, § 105, eff from and after July 1, 2001.

ARTICLE 9.

HOLDING COMPANIES.

SEC.
81-14-401. Holding companies.
81-14-403. Change in control requirement.

§ 81-14-401. Holding companies.

(1) Notwithstanding any other provision of law, any stock savings bank may simultaneously with its incorporation or conversion to a stock savings bank provide for its ownership by a holding company. In the case of a conversion, members of the converting savings bank shall have the right to purchase capital stock of the holding company in lieu of capital stock of the converted savings bank in accordance with Section 81-14-107(3)(f).

(2) Notwithstanding any other provision of law, any stock savings bank may reorganize its ownership to provide for ownership by a holding company, upon adoption of a plan of reorganization by a favorable vote of not less than two-thirds (⅔) of the members of the board of directors of the savings bank and approval of such plan of reorganization by the holders of not less than a majority of the issued and outstanding shares of stock of the savings bank. The plan of reorganization shall provide that (a) the resulting ownership shall be vested in a Mississippi corporation; (b) all stockholders of the stock savings bank shall have the right to exchange shares; (c) the exchange of stock shall not be subject to state or federal income taxation; (d) stockholders not wishing to exchange shares shall be entitled to dissenters' rights as provided under Section 79-4-13.01 et seq., Mississippi Code of 1972, and (e) the plan of reorganization is fair and equitable to all stockholders.

(3) Notwithstanding any other provision of law, any mutual savings bank may reorganize its ownership to provide for ownership by a holding company upon adoption of a plan of reorganization by favorable vote of not less than two-thirds (⅔) of the members of the board of directors of the savings bank and approval of the plan of reorganization by a majority of the voting members of the savings bank. The plan of reorganization shall provide: (a) the resulting ownership of one (1) or more subsidiary savings banks shall be evidenced by stock shares; (b) the substantial portion of the assets and all of the insured deposits and part or all of the other liabilities shall be transferred to one (1) or more subsidiary savings banks; (c) the reorganization shall not be subject to state or federal income taxation; and (d) the plan of reorganization is fair and equitable to all members of the savings bank. The commissioner shall

promulgate rules regarding the formation of the subsidiary savings banks and the holding company, including the rights of members, levels of investment in the holding company subsidiaries, and stock sales.

(4) A holding company may invest in any investment authorized by its board of directors, except as limited by regulations promulgated by the commissioner pursuant to this chapter.

(5) Any entity which controls a stock savings bank, or acquires control of a stock savings bank, is a holding company. As used in this section, "entity" means an individual, corporation, partnership, joint venture, trust, estate or unincorporated association.

(6) Holding companies shall be under the supervision of the commissioner. The commissioner shall exercise all powers and responsibilities with respect to holding companies which he exercises with respect to savings banks. However, a bank holding company subject to regulation by the Federal Reserve Board or an entity that controls one or more commercial banks shall not be considered a holding company for purposes of this chapter, even if such bank holding company or entity also owns or controls one or more savings banks, savings institutions or thrift institutions. Notwithstanding any other provision of law, such bank holding company or entity shall not be subject to supervision or regulation by the department, commissioner or board, and the department, commissioner or board shall not have access to the books and records of such bank holding company or entity.

SOURCES: Laws, 1992, ch. 489, § 104; reenacted without change, Laws, 1997, ch. 364, § 106; reenacted without change, Laws, 2001, ch. 457, § 106, eff from and after July 1, 2001.

RESEARCH REFERENCES

Am Jur. 10 Am. Jur. 2d, Banks and Financial Institutions § 21.

§ 81-14-403. Change in control requirement.

(1) Any entity contemplating an action that will result in the change of control of a savings bank or savings bank's holding company shall first make application to the commissioner for a certificate of approval. Such application shall be in the form prescribed by the commissioner and shall contain such information as he shall require.

(2) Notwithstanding the provisions of this chapter, the commissioner may define "control" by rule and regulation in a manner to ensure uniformity with federal law, regulation and usage.

SOURCES: Laws, 1992, ch. 489, § 105; reenacted without change, Laws, 1997, ch. 364, § 107; reenacted without change, Laws, 2001, ch. 457, § 107, eff from and after July 1, 2001.

ARTICLE 10.

REPEAL OF CHAPTER.

SEC.
81-14-501. Repealed.

§ 81-14-501. Repealed.

Repealed by Laws, 2001, ch. 457, eff from and after July 1, 2001.

[Laws, 1994, ch. 622, § 155; Laws, 1997, ch. 364, § 108, eff from and after July 1, 1997.]

Editor's Note — Former § 81-14-501 was a repealer for §§ 81-14-1 through 81-14-403.

CHAPTER 15

Mississippi Rural Credit Law

Sec.
81-15-1. Title.
81-15-3. Purpose.
81-15-5. Definition of term.
81-15-7. Number of incorporators required; general provisions.
81-15-9. Articles and bylaws subscribed to.
81-15-11. Amendment of bylaws.
81-15-13. Organizations may discount or sell paper to Federal Intermediate Credit Bank.
81-15-15. Organizations may borrow money from Federal Intermediate Credit Bank.
81-15-17. Discount of note or other obligation to be approved; when interest above eight percent permitted.
81-15-19. Limit of capital stock to be used for certain purposes.
81-15-21. Officers, directors and stockholders not to be liable.
81-15-23. Powers of corporation.
81-15-25. May provide warehouses.
81-15-27. May contract with warehouse.
81-15-29. Money loaned exempt.
81-15-31. Amount of capital stock necessary for certain powers.

§ 81-15-1. Title.

This chapter shall be known as the "Mississippi Rural Credit Law."

SOURCES: Codes, 1930, § 6497; 1942, § 4939; Laws, 1924, ch. 272.

Cross References — Tax exemption of agricultural credit corporations and associations, see § 27-31-17.

§ 81-15-3. Purpose.

The purpose of this chapter is to promote the welfare of agriculture and to provide ways and means by which the credit facilities of the Federal Intermediate Credit Bank, now established at New Orleans, Louisiana, may be available to the agricultural and live stock interests of this state.

SOURCES: Codes, 1930, § 6481; 1942, § 4923; Laws, 1924, ch. 272.

Cross References — Cooperative agricultural associations, see §§ 79-17-1 et seq.
Farmers' credit associations, see §§ 81-17-1 et seq.

RESEARCH REFERENCES

Am Jur. 3 Am. Jur. 2d, Agriculture §§ 16-36.

§ 81-15-5. Definition of term.

The word "organization" as used herein shall be construed to mean "agricultural credit corporation" or "agricultural credit cooperative association."

SOURCES: Codes, 1930, § 6482; 1942, § 4924; Laws, 1924, ch. 272.

§ 81-15-7. Number of incorporators required; general provisions.

Five or more natural persons may unite to form an agricultural credit corporation, the capital stock of which shall be paid in cash and shall not be for less amount than $10,000.00.

Any one or more state banks, any one or more national banks, or any one or more state and national banks may form, or unite to form, an agricultural credit corporation under the provisions hereof as a separate and distinct crediting institution. The capital stock of any such corporation shall not be for a less amount than $10,000.00, which must be paid up in cash. Any bank desiring to form an agricultural credit corporation, or any bank desiring to subscribe to stock in any agricultural credit corporation formed under the provisions hereof is hereby authorized and empowered to subscribe for any such stock, using any money that may be available, and not required by the banking law to be set aside for surplus account, to pay therefor; and for the same purpose, any bank organized under the laws of Mississippi is hereby authorized and empowered to borrow money.

No organization formed under the provisions hereof shall be subject to the control, management, or supervision of the department of bank supervision.

The directors of any national farm loan association chartered under the provisions of the Federal Farm Loan Act and doing business in this state may organize an agricultural credit cooperative association on an accumulative capital stock plan similar to the method provided for national farm loan associations in the Federal Farm Loan Act, and do business with the members of said national farm loan association, or with other qualified persons. The directors of said association shall hold office until the first annual meeting, when the directors shall be elected by the members from among their number.

Ten or more persons engaged in producing, or producing and marketing, staple agricultural products, or live stock, may unite to form an agricultural credit cooperative association, with or without capital stock, and, if with capital stock, either on the paid up cash plan or on an accumulative plan, said capital stock increasing with and in the proportion as its loans increase, as provided by the bylaws.

Any agricultural credit cooperative association organized hereunder may provide that capital stock shall be paid in cash or that it may be payable out of the loan when made by said association to a member.

SOURCES: Codes, 1930, § 6483; 1942, § 4925; Laws, 1924, ch. 272.

Editor's Note — Section 81-1-57 provides that wherever the words "department of bank supervision" or "department" when referring to the department of bank supervision, shall be construed to mean the department of banking and consumer finance.

§ 81-15-9. Articles and bylaws subscribed to.

Those desiring to organize hereunder shall subscribe to, and duly acknowledge, articles of association and bylaws.

The articles of association shall set forth the name of the organization which shall include the words "agricultural credit"; the principal place of business; the term of years the organization is to exist; the name and addresses of the persons who are to act as directors and officers until the first annual meeting; and when the organization is one with capital stock, the amount of capital stock and the par value of the shares which shall not be less than $5.00 each.

The bylaws shall specify the powers of the organization, the powers and duties of the directors, the powers and duties of the respective officers, the manner and method of conducting the business of said organization and all rules and regulations that may be necessary for the proper management of said organization. The bylaws cannot be changed except as hereinafter provided. The bylaws shall be binding on such organization, the members and the stockholders thereof, and on all with whom such organization does business, and shall have the full force and effect of law.

The articles of association and bylaws shall be subscribed to and acknowledged in triplicate, and submitted to the Federal Intermediate Credit Bank of New Orleans, Louisiana, for approval. When said bank approves such articles of association and bylaws and attests thereto, said articles of association and said bylaws shall be immediately forwarded to the secretary of state, with the fee for recording and certifying same as provided for in the chapter on corporations, if an agricultural credit corporation, and with a fee of five dollars in lieu of the above fee if an agricultural credit cooperative association. Said articles of association shall thereupon be examined by the Attorney-General and be submitted to the governor for his approval or disapproval as in the case of other domestic corporations, except that no publication and proof thereof shall be first required. When a copy of said articles shall have been approved by the governor and returned to the secretary of state for record, the secretary of state shall record same as now provided by law and shall also forward a certified copy of said articles of association and bylaws to be recorded as required by § 189 of the Constitution, in the office of the chancery clerk of the county in which the principal office or place of business be located. After approval and recordation as set out above, said organization shall have the power to do business.

SOURCES: Codes, 1930, § 6484; 1942, § 4926; Laws, 1924, ch. 272.

Editor's Note — Section 189 of the Mississippi Constitution, referred to in this section, was repealed by Laws, 1987, ch. 692, and upon ratification by the electorate, effective December 4, 1987.

Cross References — Filing fees for corporations generally, see §§ 79-4-1.20, 79-4-1.22.

Amendment of bylaws, see § 81-15-11.

§ 81-15-11. Amendment of bylaws.

The bylaws of any organization formed hereunder may be amended by a majority vote of the stock held by those present at any meeting at which a quorum attends, the notice of which meeting shall have been given in accordance with the bylaws and shall have stated the purport of the proposed amendment and the intention to bring it up for consideration. Such amendment shall not become effective until it has been approved by the Federal Intermediate Credit Bank, and a copy recorded in the office of the chancery clerk of the county in which such organization has its domicile.

SOURCES: Codes, 1930, § 6485; 1942, § 4927; Laws, 1924, ch. 272.

§ 81-15-13. Organizations may discount or sell paper to Federal Intermediate Credit Bank.

Agricultural credit corporations and agricultural credit cooperative associations organized hereunder shall have power to discount with, or sell to the Federal Intermediate Credit Bank of New Orleans, Louisiana, any note, draft, bill of exchange, debenture, or other obligation, the proceeds of which have been advanced or used in the first instance for any agricultural purpose, or for the raising, breeding, fattening, or marketing of live stock, provided the amount of such paper added to the aggregate liabilities of such corporation or association does not exceed ten times the paid in and unimpaired capital and surplus of such corporation or association.

SOURCES: Codes, 1930, § 6486; 1942, § 4928; Laws, 1924, ch. 272.

Cross References — Borrowing money from Federal Intermediate Credit Bank, see § 81-15-15.

§ 81-15-15. Organizations may borrow money from Federal Intermediate Credit Bank.

Any agricultural credit cooperative association organized hereunder shall have power, and is hereby authorized to borrow money from said Federal Intermediate Credit Bank on its notes or like instruments of indebtedness, when such notes or like instruments of indebtedness are secured by warehouse receipts or shipping documents covering such products, and in the case of live stock by mortgages on the same. No money thus borrowed shall exceed seventy-five percent of the market value of the products covered by said warehouse receipts or shipping documents, or of the live stock covered by said mortgages.

SOURCES: Codes, 1930, § 6487; 1942, § 4929; Laws, 1924, ch. 272.

§ 81-15-17. Discount of note or other obligation to be approved; when interest above eight percent permitted.

No organization hereby authorized shall, without the approval of the Federal Farm Loan Board, discount any note or other obligation, upon which the original borrower has been charged a rate of interest exceeding by more than one and one-half percent per annum the discount rate of said Federal Intermediate Credit Bank at the time the loan was made. But any organization hereby authorized may charge the original borrower a rate of interest equal to the current discount rate of said Federal Intermediate Credit Bank plus such excess as may be approved by the Federal Farm Loan Board, and if such rate shall amount to more than eight percent per annum the same shall not invite any penalty, nor constitute a violation of any interest or usury law of this state.

SOURCES: Codes, 1930, § 6488; 1942, § 4930; Laws, 1924, ch. 272; Laws, 1932, ch. 245.

§ 81-15-19. Limit of capital stock to be used for certain purposes.

No organization provided for herein shall have power to use or invest more than twenty percent of its capital stock for organization, current expenses, rent, personal or real property necessary for its use in conducting its business, or for providing warehouses or warehouse facilities.

SOURCES: Codes, 1930, § 6489; 1942, § 4931; Laws, 1924, ch. 272.

§ 81-15-21. Officers, directors and stockholders not to be liable.

No officer, director, nor stockholder of any organization doing business hereunder shall be individually or personally liable for the debts of said association or corporation.

SOURCES: Codes, 1930, § 6490; 1942, § 4932; Laws, 1924, ch. 272; Laws, 1932, ch. 259.

§ 81-15-23. Powers of corporation.

Organizations provided for hereunder shall have all the usual powers of corporations, and to sue and be sued both in law and in equity.

SOURCES: Codes, 1930, § 6492; 1942, § 4934; Laws, 1924, ch. 272.

§ 81-15-25. May provide warehouses.

Any organization herein provided for may acquire, purchase, own, or lease, and control and operate suitable warehouses for the safe storing of such agricultural products as may be produced by its borrowers, or by its members;

and whenever it is deemed expedient to utilize the United States Warehouse Act, said organization shall have the power to do any and all things necessary to enable it to comply with the provisions of said act of congress.

Any exemptions under any and all existing laws applying to agricultural products in the possession or under the control of the individual producer shall apply similarly and completely to such products delivered by its farmer members in the possession or under the control of any organization provided for herein.

SOURCES: Codes, 1930, § 6493; 1942, § 4935; Laws, 1924, ch. 272.

Cross References — Warehouse receipts generally, see §§ 75-7-101 et seq.

§ 81-15-27. May contract with warehouse.

Any organization herein provided for shall have power to contract with any existent warehouse, whether under control of the United States Warehouse Act or whether under the control of any law of Mississippi for storage therein of agricultural products produced by borrowers or members.

SOURCES: Codes, 1930, § 6494; 1942, § 4936; Laws, 1924, ch. 272.

§ 81-15-29. Money loaned exempt.

All money loaned by any organization provided for herein shall be exempt from taxation.

SOURCES: Codes, 1930, § 6495; 1942, § 4937; Laws, 1924, ch. 272.

§ 81-15-31. Amount of capital stock necessary for certain powers.

Any corporation, or cooperative association, organized under the laws of this state, having paid up capital of $10,000.00, or more, and in the business of making advances for agricultural purposes shall have power to do business hereunder by amending its charter and by submitting its articles of association and by-laws, attested by its proper officer, to the Federal Intermediate Credit Bank, New Orleans, Louisiana, for approval, and by recording an approved copy of the same as required above and by complying with the provisions above.

SOURCES: Codes, 1930, § 6496; 1942, § 4938; Laws, 1924, ch. 272.

CHAPTER 17

Farmers' Credit Associations

Sec.	
81-17-1.	Title.
81-17-3.	Declaration of policy.
81-17-5.	Definitions.
81-17-7.	Who may organize.
81-17-9.	Purposes.
81-17-11.	Powers.
81-17-13.	Membership.
81-17-15.	Articles of association.
81-17-17.	Amendments to articles of association.
81-17-19.	Organization.
81-17-21.	Bylaws.
81-17-23.	Surplus and sinking funds invested.
81-17-25.	Tax exemption.

§ 81-17-1. Title.

This chapter may be known and referred to as the "Farmers' Credit Association Law."

SOURCES: Codes, 1930, § 6470; 1942, § 4912; Laws, 1924, ch. 271.

Cross References — Tax exemption of agricultural credit corporations and associations, see § 27-31-17.

For another section derived from same 1942 code section, see § 81-17-5.

§ 81-17-3. Declaration of policy.

It is the purpose of this chapter to promote, encourage and assist the united action of the farmers of the state, through co-operative methods in obtaining necessary moneys and credits for the members of the associations contemplated herein during a longer period of time and at a lower rate of interest than is usually obtainable by those engaged in agricultural, garden, and orchard production, the growing of all kinds of live stock, of beef cattle, and of dairying cattle, and of breeding cattle, sheep and hogs, and all kinds of domestic animals.

SOURCES: Codes, 1930, § 6469; 1942, § 4911; Laws, 1924, ch. 271.

Cross References — Farm loan bonds, see §§ 75-69-1 et seq.

RESEARCH REFERENCES

Am Jur. 3 Am. Jur. 2d, Agriculture §§ 18-36.

§ 81-17-5. Definitions.

The terms used in this chapter, in addition to their common use and meaning are also defined as follows:

(a) The term "agricultural products" shall include horticultural, viticultural, dairy, live stock, poultry, bee, fowl, and any other farm products;

(b) The term "member" shall include actual members of associations without capital stock, and holders of common stock in associations organized with capital stock;

(c) The term "association" means any association organized under this chapter; and,

(d) The term "person" shall include individuals, firms, partnerships, corporations, and associations.

Associations organized hereunder shall be deemed nonprofit, inasmuch as they are not organized to make profits for themselves, as such, or for their members, as such, but only for their members as producers.

SOURCES: Codes, 1930, § 6470; 1942, § 4912; Laws, 1924, ch. 271.

Cross References — For another section derived from same 1942 code section, see § 81-17-1.

§ 81-17-7. Who may organize.

Ten or more persons, a majority of whom are residents of this state, engaged in the production of any of the products named in Section 81-17-5 may form an association, with or without capital stock, under the provisions hereof.

SOURCES: Codes, 1930, § 6471; 1942, § 4913; Laws, 1924, ch. 271.

§ 81-17-9. Purposes.

An association may be organized hereunder to engage in any one or more of the activities mentioned above or in financing those engaged in any one or more of such activities, or engaged in doing both.

SOURCES: Codes, 1930, § 6472; 1942, § 4914; Laws, 1924, ch. 271.

§ 81-17-11. Powers.

Each association incorporated under this chapter, in addition to the powers granted by the Mississippi statutes to corporations, shall have the following powers:

(a) To engage in any one or more of the activities named in Sections 81-17-3 and 81-17-5.

(b) To contract and be contracted with, to sue and be sued.

(c) To borrow money from any lender and through any channels that the same may be obtained, and to secure the same in any lawful way that may be desirable.

(d) To issue its notes, obligations, indorsements and underwritings, to sell, discount, hypothecate, or pledge its bills receivable, mortgages, trust deeds, notes, and other securities.

(e) To lend money to its members, and take securities therefor in such form, way and manner, as it may deem advisable.

(f) By proper bylaws to make and keep such associations mutual.

(g) To make all necessary bylaws for the government of said associations.

(h) To issue common and preferred stock, and fix the relative status of each such class of stock to the other, both as to its stock status and as to its dividend status.

(i) To create and set up reserves, and make them cumulative.

(j) To require that each borrower invest a certain percentage, not exceeding ten percent, which may be made payable out of the face of his loan, in the stock of said association, and the same may be apportioned between common stock and preferred stock, as may be provided by the bylaws of the association.

(k) To make bylaws controlling the sale or transfer of stock in said association, or the retirement or withdrawal thereof.

(*l*) To lease or acquire sufficient personal and real property for the necessities of its business.

(m) To have and use a corporate seal.

SOURCES: Codes, 1930, § 6473; 1942, § 4915; Laws, 1924, ch. 271.

Cross References — Bylaws, see § 81-17-21.

§ 81-17-13. Membership.

(1) Any person, partnership, or corporation, may become a member of any one, or more, associations.

(2) Every applicant for membership must become a borrower to entitle him to be admitted as a member.

(3) Each applicant must sign a writing, in the form of a recordable instrument, declaring himself to be a member of the association to which he is admitted. This may be done by a separate writing, or by and through a declaration to that effect written into his mortgage or trust deed, upon faith of which he borrows money from the association. Such writing shall also contain therein a declaration of the parties signatory thereto that such applicant holds himself thenceforth bound by the laws of the association then adopted, or that may be thereafter adopted.

(4) In addition to the common stock taken in the association by each borrower, each member shall be liable for an assessment of ten percent on the face of his loan, to be secured by the security given for the loan, in case there be losses in any year's operations which require such assessment.

(5) Each borrower, for each loan made to him, shall be treated and considered as being a new member, in so far as the laws and bylaws of the association are concerned and to be applied.

SOURCES: Codes, 1930, § 6474; 1942, § 4916; Laws, 1924, ch. 271.

§ 81-17-15. Articles of association.

Each association formed under this chapter must prepare and file articles of association, setting forth:

(a) The name of the association;

(b) The purpose for which it is formed;

(c) The place where its principal business will be transacted;

(d) The term for which it is to exist, not exceeding fifty (50) years;

(e) The number of directors thereof, which must not be less than five (5), and may be any number in excess thereof, and the term of office of such directors. The number of directors may, from time to time, be increased at any annual meeting of the stockholders.

(f) If organized without capital, whether the property rights and interest of each member shall be equal or unequal; and, if unequal, the articles shall set forth the general rule or rules applicable to all members by which property rights and interests, respectively, of each member may and shall be determined and fixed; and provisions for the admission of new members who shall be entitled to share in the property of the association with the old members, in accordance with such general rule or rules. This paragraph of the articles of association shall not be altered, amended, or repealed except by the written consent of the vote of three-fourths of the members.

The articles must be subscribed by the incorporators and acknowledged by one of them before an officer authorized by the law of this state to take and certify acknowledgments; and shall be filed and recorded in the office of the secretary of state.

SOURCES: Codes, 1930, § 6475; 1942, § 4917; Laws, 1924, ch. 271.

Cross References — Amendments of articles of association, see § 81-17-17.
Bylaws, see § 81-17-21.

§ 81-17-17. Amendments to articles of association.

Any amendment to the articles of association must first be approved by a vote of not less than two-thirds of all of the members of the board of directors. Such proposed amendment shall then be submitted to either a regular or a special meeting of the members of the association, and its adoption shall require a majority of all the members whose names are of record on the books of the association. Absent members may vote at such meeting, on such proposed amendments, either in writing, or by proxy, addressed to the secretary of the association. In such case the secretary shall read and announce the vote of such absent members. Amendments to the articles of association when so adopted, shall be certified to by the president and secretary of the association, and shall be filed with the Secretary of State. Such certification and filing shall be conclusive evidence of the validity of such amendment.

SOURCES: Codes, 1930, § 6476; 1942, § 4918; Laws, 1924, ch. 271.

§ 81-17-19. Organization.

The charter to organize any association under this chapter may be applied for by three proposed members of such association, such application to be made in the manner and form as prescribed by the chapter on corporations, when, and whereupon, such charter may be granted by the state.

SOURCES: Codes, 1930, § 6477; 1942, § 4919; Laws, 1924, ch. 271.

§ 81-17-21. Bylaws.

Said associations may make and adopt any and all bylaws, not in conflict with the laws of the State of Mississippi, for the governing and control of its affairs. Such bylaws shall provide for such officers as may be necessary for the operation of said association, and name the time for annual meetings of stockholders and the officers, and for such other meetings as may be deemed necessary.

SOURCES: Codes, 1930, § 6478; 1942, § 4920; Laws, 1924, ch. 271.

§ 81-17-23. Surplus and sinking funds invested.

The associations shall have power to invest and reinvest the surplus and sinking funds as may accumulate in its hands from time to time for the use and benefit of its members and stockholders.

SOURCES: Codes, 1930, § 6479; 1942, § 4921; Laws, 1924, ch. 271.

§ 81-17-25. Tax exemption.

So long as said associations shall be kept mutual, and shall lend only to members, they shall be exempt from all forms of taxation; that is, from state, county, municipal, levee board and public improvement taxes, excepting ad valorem taxation of motor vehicles owned by said associations.

SOURCES: Codes, 1930, § 6480; 1942, § 4922; Laws, 1924, ch. 271; Laws, 1978, ch. 514, § 8, eff from and after July 1, 1978.

Cross References — Exemptions from ad valorem tax on automobiles, see § 27-51-41.

CHAPTER 18

Mississippi S.A.F.E. Mortgage Act

In General 81-18-1
Nationwide Licensing System 81-18-61

IN GENERAL

Sec.
81-18-1. Short title [Repealed effective July 1, 2016].
81-18-3. Definitions [Repealed effective July 1, 2016].
81-18-5. Exemptions [Repealed effective July 1, 2016].
81-18-7. Mortgage broker, mortgage lender, or mortgage loan originator licensing requirement; violations [Repealed effective July 1, 2016].
81-18-8. Enactment of local ordinances and regulations in compliance with this chapter authorized [Repealed effective July 1, 2016].
81-18-9. Application for license [Repealed effective July 1, 2016].
81-18-11. Mortgage loan originator surety bond requirement; form; amount [Repealed effective July 1, 2016].
81-18-13. Authorization to collect and maintain records and process fees related to licensees; timing of grant or denial of request for license [Repealed effective July 1, 2016].
81-18-14. Prelicensing education requirements; written test requirement [Repealed effective July 1, 2016].
81-18-15. Mortgage broker, mortgage lender and mortgage loan originator license renewal procedures; license fees; annual continuing education requirements for mortgage loan originators [Repealed effective July 1, 2016].
81-18-17. License nontransferable and nonassignable; notification to department of change in address, location, officers, etc.; department approval required for opening of branch office; notification to department of release of loan originator from employment; notification to department of change of qualifying individual of licensee [Repealed effective July 1, 2016].
81-18-19. Acquisition of interest in licensee [Repealed effective July 1, 2016].
81-18-21. Maintenance and investigation of business records; biennial investigation; examination fee; department authorized to examine persons suspected of conducting business requiring a license; licensee to make records and books available to commissioner and compile reports; commissioner may control access to records of licensee under investigation [Repealed effective July 1, 2016].
81-18-23. Annual written report by licensee [Repealed effective July 1, 2016].
81-18-25. Requirements for principal place of business and branch offices [Repealed effective July 1, 2016].
81-18-27. Prohibited acts; licensed mortgage broker or mortgage lender to broker residential mortgage loan only to licensed mortgage brokers or mortgage lenders or exempt persons [Repealed effective July 1, 2016].
81-18-28. Maximum lock-in fee; contents of lock-in fee agreement [Repealed effective July 1, 2016].
81-18-29. Promulgation of rules and regulations [Repealed effective July 1, 2016].
81-18-31. Regulations governing advertising of mortgage loans [Repealed effective July 1, 2016].
81-18-33. Required contents of individual borrower files [Repealed effective July 1, 2016].

81-18-35. Journal of mortgage transactions for Mississippi residential loans that licensee originates and/or funds; journal of serviced loans for Mississippi residential loans that licensee owns and/or services [Repealed effective July 1, 2016].
81-18-36. Funds paid to licensee for payment of taxes or insurance premiums must be deposited in separate account from funds belonging to licensee; account to be designated "escrow account"; accounting for funds [Repealed effective July 1, 2016].
81-18-37. Suspension or revocation of license; notice to licensee [Repealed effective July 1, 2016].
81-18-39. Definition of "person"; violations of law; cease and desist orders; failure to comply with order; civil penalty [Repealed effective July 1, 2016].
81-18-40. Commissioner authorized to issue subpoenas; penalties for noncompliance with subpoena [Repealed effective July 1, 2016].
81-18-41. Continuation of loan servicing under existing servicing contracts by suspended licensee [Repealed effective July 1, 2016].
81-18-43. Penalties for violations; report of violations; hearing on amount of penalty; judicial review [Repealed effective July 1, 2016].
81-18-45. Commissioner authorized to hire additional full-time employees [Repealed effective July 1, 2016].
81-18-47. Immunity from liability [Repealed effective July 1, 2016].
81-18-49. Grandfather provisions [Repealed effective July 1, 2016].
81-18-51. Repeal of §§ 81-18-1 through 81-18-63 [Repealed effective July 1, 2016].
81-18-53. Applicability of chapter [Repealed effective July 1, 2016].
81-18-55. Activities prohibited in the course of residential mortgage loan transactions; compliance with borrower's request for information; compliance with certain requirements whether residential mortgage loan is in default or borrower is in bankruptcy [Repealed effective July 1, 2016].

§ 81-18-1. Short title [Repealed effective July 1, 2016].

This chapter shall be known and cited as the "Mississippi S.A.F.E. Mortgage Act."

SOURCES: Laws, 2000, ch. 579, § 1; reenacted without change, Laws, 2002, ch. 500, § 1; reenacted without change, Laws, 2004, ch. 364, § 1; reenacted without change, Laws, 2007, ch. 581, § 1; Laws, 2009, ch. 544, § 1; reenacted and amended, Laws, 2010, ch. 462, § 1; reenacted without change, Laws, 2012, ch. 571, § 1, eff from and after July 1, 2012.

Editor's Note — For the repeal date of this section, see § 81-18-51.

Cross References — Applicability of this chapter to the activities of retail sellers of manufactured homes, see § 81-18-53.

Licensees under §§ 81-18-1 through 81-18-51 exempt from the Consumer Loan Broker Act, see § 81-19-7.

JUDICIAL DECISIONS

1. Preemption by National Bank Act.

Plaintiff consumers' state claims under the Mississippi Consumer Loan Broker Act, Miss. Code Ann. § 81-19-1 et seq., and Mississippi Mortgage Consumer Protection Act, Miss. Code Ann. § 81-18-1 et seq., relating to defendant national bank's real estate lending powers granted by the National Bank Act, were preempted by that Act and by 12 C.F.R. § 34.3(a), (b).

Austin v. Provident Bank, — F. Supp. 2d —, 2005 U.S. Dist. LEXIS 37113 (N.D. Miss. July 26, 2005).

§ 81-18-3. Definitions [Repealed effective July 1, 2016].

For purposes of this chapter, the following terms shall have the following meanings:

(a) "Application" means the submission of a borrower's financial information in anticipation of a credit decision, whether written or computer-generated. If the submission does not state or identify a specific property, the submission is an application for a prequalification and not an application for a federally related mortgage loan. The subsequent addition of an identified property to the submission converts the submission to an application for a federally related mortgage loan.

(b) "Borrower" means a person who submits an application for a residential mortgage loan.

(c) "Branch" means a location of a company in or outside of the state that conducts business as a mortgage broker or mortgage lender. A location shall be considered a branch regarding mortgage broker or mortgage lender activities in any of the following:

(i) If the location is used on any type of advertisement;

(ii) If any type of record, loan file or application of the company is located at the location, with the exception of unstaffed storage facilities; or

(iii) If the activities of a mortgage loan originator occur at the location.

(d) "Commissioner" means the Commissioner of the Mississippi Department of Banking and Consumer Finance.

(e) "Commitment" means a statement by a lender required to be licensed under this chapter that sets forth the terms and conditions upon which the lender is willing to make a particular mortgage loan to a particular borrower.

(f) "Company" means a licensed mortgage broker or mortgage lender under this chapter.

(g) "Control" means the direct or indirect possession of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract or otherwise, and shall include "controlling," "controlled by," and "under common control with."

(h) "Department" means the Department of Banking and Consumer Finance of the State of Mississippi.

(i) "Depository institution" has the same meaning as in Section 3 of the Federal Deposit Insurance Act, and includes any credit union.

(j) "Executive officer" means the chief executive officer, the president, the principal financial officer, the principal operating officer, each vice president with responsibility involving policy-making functions for a significant aspect of a person's business, the secretary, the treasurer, or any other person performing similar managerial or supervisory functions with respect to any organization whether incorporated or unincorporated.

(k) "Federal banking agencies" means the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the National Credit Union Administration, and the Federal Deposit Insurance Corporation.

(*l*) "Housing finance agency" means any authority that is chartered by a state to help meet the affordable housing needs of the residents of the state, is supervised directly or indirectly by the state government, is subject to audit and review by the state in which it operates, and whose activities make it eligible to be a member of the National Council of State Housing Agencies.

(m) "Immediate family member" means a spouse, child, sibling, parent, grandparent or grandchild. This term includes stepparents, stepchildren, stepsiblings and adoptive relationships.

(n) "Individual" means a "natural person."

(o) "License" means a license to act as a mortgage broker or mortgage lender issued by the department under this chapter.

(p) "Licensee" means a person who is required to be licensed as a mortgage broker or mortgage lender under this chapter.

(q) "Loan processor or underwriter" means an individual who performs clerical or support duties as an employee at the direction of and subject to the supervision and instruction of a person licensed or exempt from licensing under this chapter.

For the purposes of this paragraph (q), the term "clerical or support duties" may include, after the receipt of an application:

(i) The receipt, collection, distribution and analysis of information common for the processing or underwriting of a residential mortgage loan; and

(ii) Communicating with a consumer to obtain the information necessary for the processing or underwriting of a loan, to the extent that the communication does not include offering or negotiating loan rates or terms, or counseling consumers about residential mortgage loan rates or terms.

An individual engaging solely in loan processor or underwriter activities, shall not represent to the public, through advertising or other means of communicating or providing information including the use of business cards, stationery, brochures, signs, rate lists or other promotional items, that the individual can or will perform any of the activities of a mortgage loan originator.

(r) "Lock-in agreement" means a written agreement stating the terms of the lock-in fee.

(s) "Lock-in fee" means a fee collected by a licensee to be paid to a lender to guarantee an interest rate or a certain number of points on a mortgage loan from the lender.

(t) "Make a mortgage loan" means to advance funds, offer to advance funds or make a commitment to advance funds to a borrower.

(u) "Misrepresent" means to make a false statement of a substantive fact or to engage in, with intent to deceive or mislead, any conduct that leads to a false belief that is material to the transaction.

(v) "Mortgage broker" means any person who directly or indirectly or by electronic activity solicits, places or negotiates residential mortgage loans for others, or offers to solicit, place or negotiate residential mortgage loans for others that does not close residential mortgage loans in the company name, does not use its own funds, or who closes residential mortgage loans in the name of the company, and sells, assigns or transfers the loan to others within forty-eight (48) hours of the closing.

(w) "Mortgage lender" means any person who directly or indirectly or by electronic activity originates, makes, funds or purchases or offers to originate, make, or fund or purchase a residential mortgage loan or who services residential mortgage loans.

(x) "Mortgage-lending process" means the process through which a person seeks or obtains a mortgage loan, including, but not limited to, solicitation, application, origination, negotiation of terms, third-party provider services, underwriting, signing and closing, and funding of the loan. Documents involved in the mortgage-lending process include, but are not limited to, uniform residential loan applications or other loan applications, appraisal reports, HUD-1 Settlement Statements, supporting personal documentation for loan applications such as W-2 forms, verifications of income and employment, bank statements, tax returns, payroll stubs and any required disclosures.

(y) "Mortgage loan originator" means an individual who:

(i) Takes a residential mortgage loan application; and

(ii) Offers or negotiates terms of a residential mortgage loan for compensation or gain. The term "mortgage loan originator" does not include:

1. An individual engaged solely as a loan processor or underwriter except as otherwise provided in this chapter;

2. A person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with Mississippi law, unless the person or entity is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator; and

3. A person or entity solely involved in extensions of credit relating to time-share plans, as that term is defined in Title 11 USCS, Section 101(53D).

(z) "Nationwide Mortgage Licensing System and Registry" means a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of licensed mortgage loan originators.

(aa) "Natural person" means a human being, as distinguished from an artificial person created by law.

(bb) "Nontraditional mortgage product" means any mortgage product other than a thirty-year fixed rate mortgage.

(cc) "Offering or negotiating a residential mortgage loan" means:

(i) Presenting particular mortgage loan terms for consideration by a borrower; or

(ii) Communicating directly or indirectly with a borrower for purposes of reaching a mutual understanding about prospective loan terms.

"Offering or negotiating" does not include the following: the mere sharing of general information about a financing source; discussing hypothetical financing options, i.e., options not related to specific financing source; giving the homebuyer a list of available financing sources; discussing a buyer's ability to afford a home; presenting or discussing generic facts or generic rate sheets; closing personal property transactions.

(dd) "Person" means a natural person, sole proprietorship, corporation, company, limited liability company, partnership or association.

(ee) "Principal" means a person who, directly or indirectly, owns or controls an ownership interest of ten percent (10%) or more in a corporation or any other form of business organization, regardless of whether the person owns or controls the ownership interest through one or more persons or one or more proxies, powers of attorney, nominees, corporations, associations, limited liability companies, partnerships, trusts, joint-stock companies, other entities or devises, or any combination thereof.

(ff) "Qualifying individual" means an owner or employee of a mortgage broker or mortgage lender who submits documentation of two (2) years' experience directly related to mortgage activities and who shall be primarily responsible for the operations of the licensed mortgage broker or mortgage lender. This individual will also be designated as the qualifying individual in the Nationwide Mortgage Licensing System and Registry.

(gg) "Real estate brokerage activity" means any activity that involves offering or providing real estate brokerage services to the public, including:

(i) Acting as a real estate agent or real estate broker for a buyer, seller, lessor or lessee of real property;

(ii) Bringing together parties interested in the sale, purchase, lease, rental or exchange of real property;

(iii) Negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental or exchange of real property (other than in connection with providing financing with respect to any such transaction);

(iv) Engaging in any activity for which a person engaged in the activity is required to be registered or licensed as a real estate agent or real estate broker under any applicable law; and

(v) Offering to engage in any activity, or act in any capacity, described in subparagraph (i), (ii), (iii) or (iv) of this paragraph (gg).

(hh) "Records" or "documents" means any item in hard copy or produced in a format of storage commonly described as electronic, imaged, magnetic, microphotographic or otherwise, and any reproduction so made shall have the same force and effect as the original thereof and be admitted in evidence equally with the original.

(ii) "Registered mortgage loan originator" means any individual who:

(i) Meets the definition of mortgage loan originator and is an employee of a depository institution, a subsidiary that is owned and controlled by a depository institution and regulated by a federal banking agency or an institution regulated by the Farm Credit Administration; and

(ii) Is registered with, and maintains a unique identifier through, the Nationwide Mortgage Licensing System and Registry.

(jj) "Residential mortgage loan" means any loan primarily for personal, family or household use that is secured by a mortgage, deed of trust or other equivalent consensual security interest on a dwelling (as defined in Section 103(v) of the Truth in Lending Act) or residential real estate upon which is constructed or intended to be constructed a dwelling (as so defined).

(kk) "Residential real estate" means any real property located in Mississippi upon which is constructed or intended to be constructed a dwelling.

(*ll*) "Service a mortgage loan" means the collection or remittance for another, the right to collect or remit for another, or the collection of the company's own loan portfolio, whether or not the company originated, funded or purchased the loan in the secondary market, of payments of principal and interest, trust items such as insurance and taxes, and any other payments pursuant to a mortgage loan.

(mm) "Taking an application for a residential mortgage loan" means a receipt of an application for the purpose of deciding whether or not to extend the requested offer of a loan to the borrower whether the application is received directly or indirectly from the borrower. However, an individual whose only role with respect to the application is physically handling a completed application form or transmitting a completed form to a lender on behalf of a prospective borrower does not take an application.

(nn) "Unique identifier" means a number or other identifier assigned by protocols established by the Nationwide Mortgage Licensing System and Registry.

SOURCES: Laws, 2000, ch. 579, § 2; reenacted and amended, Laws, 2002, ch. 500, § 2; reenacted and amended, Laws, 2004, ch. 364, § 2; reenacted and amended, Laws, 2007, ch. 581, § 2; Laws, 2008, ch. 434, § 1; Laws, 2009, ch. 544, § 2; reenacted and amended, Laws, 2010, ch. 462, § 2; reenacted and amended, Laws, 2012, ch. 571, § 2; Laws, 2013, ch. 499, § 1, eff from and after July 1, 2013.

Editor's Note — For the repeal date of this section, see § 81-18-51.

Cross References — Applicability of this chapter to the activities of retail sellers of manufactured homes, see § 81-18-53.

Multistate licensing system, see § 81-18-61.

Licensed real estate brokers, see §§ 73-31-1 et seq.

Federal Aspects — Section 3 of the Federal Deposit Insurance Act, 12 USCS § 1813.

Section 103(v) of the Truth in Lending Act, 15 USCS § 1602(v).

§ 81-18-5. Exemptions [Repealed effective July 1, 2016].

The following are exempt from the provisions of this chapter:

(a) Registered mortgage loan originators, when acting for an entity described in Section 81-18-3(ii).

(b) Any person who offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member of the individual.

(c) Any person, estate or trust who owner finances in one (1) calendar year no more than ten (10) residential mortgage loans or no more than twenty percent (20%) of his total residential units sold, whichever is greater. A violation of this paragraph (c) shall not affect the title of the purchaser/borrower or the obligation of the purchaser/borrower under the terms of the mortgage loan.

(d) A licensed attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client, unless the attorney is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of the lender, mortgage broker, or other mortgage loan originator.

(e) A depository institution, or a subsidiary that is owned and controlled by a depository institution, or an institution regulated by the Farm Credit Administration.

(f) Any mortgage lender who holds a valid license under the provisions of the Small Loan Regulatory Law, Section 75-67-101 et seq., and the Small Loan Privilege Tax Law, Section 75-67-201 et seq., and whose mortgage lending activities are limited solely to the servicing of mortgage loans that were in such mortgage lender's own loan portfolio as of December 31, 2009. For the purposes of the exemption in this paragraph (f), "servicing of mortgage loans" shall mean and include the collection of payments of principal and interest, insurance premiums, taxes and other payments required under such mortgage loans, and shall also include activities related to the collection of such payments such as collection calls whether by phone, mail, electronic means or in person, and enforcement remedies permitted by law or at equity. In no event shall the term "servicing of mortgage loans" include the renewal or reworking of the mortgage. If a mortgage loan is renewed or reworked, the lender shall be required to obtain a mortgage license in order to continue any mortgage activity described in this chapter.

(g) Any bona fide nonprofit organization and its employees who demonstrate to the satisfaction of the commissioner through the periodic examination of the books and activities of the organization as required in Section 81-18-21, Mississippi Code of 1972, that they continually meet the following requirements, at a minimum:

(i) Maintains tax-exempt status under Section 501(c)(3) of the Internal Revenue Code of 1986;

(ii) Promotes affordable housing or provides homeownership education, or similar services;

(iii) Conducts its activities in a manner that serves public or charitable purposes;

(iv) Receives funding and revenue and charges fees in a manner that does not incentivize the organization or its employees to act other than in the best interests of its clients;

(v) Compensates employees in a manner that does not incentivize employees to act other than in the best interests of its client; and

(vi) Provides to or identifies for the borrower residential mortgage loans with terms that are favorable to the borrower and comparable to mortgage loans and housing assistance provided under government housing assistance programs.

(h) Any person who is an employee of a government agency or housing finance agency who acts as a mortgage loan originator in accordance with his duties as an employee of such agency.

(i) Any person who performs clerical or support duties at the direction of and subject to the supervision and instruction of a state-licensed loan originator or a registered loan originator. For purposes of this paragraph (i), the term "clerical or support duties" may include:

(i) The receipt, collection, distribution and analysis of information common for the processing or underwriting of a residential mortgage loan; and

(ii) Communicating with a consumer to obtain the information necessary for the processing or underwriting of a loan, to the extent that such communication does not include offering or negotiating loan rates or terms, or counseling consumers about residential mortgage loan rates or terms.

SOURCES: Laws, 2000, ch. 579, § 3; reenacted and amended, Laws, 2002, ch. 500, § 3; reenacted and amended, Laws, 2004, ch. 364, § 3; reenacted and amended, Laws, 2007, ch. 581, § 3; Laws, 2008, ch. 434, § 2; Laws, 2009, ch. 428, § 2; Laws, 2009, ch. 544, § 3; reenacted and amended, Laws, 2010, ch. 462, § 3; reenacted and amended, Laws, 2012, ch. 571, § 3; reenacted and amended, Laws, 2013, ch. 421, § 1, eff from and after July 1, 2013.

Joint Legislative Committee Note — Section 2 of ch. 428, Laws of 2009, effective July 1, 2009 (approved March 23, 2009), amended this section. Section 3 of ch. 544, Laws of 2009, effective July 31, 2009 (approved April 15, 2009), also amended this section. As set out above, this section reflects the language of Section 3 of ch. 544, Laws of 2009, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, the amendment with the latest effective date shall supersede all other amendments to the same section taking effect on an earlier date.

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in a statutory reference in paragraph (a) by substituting "described in Section 81-18-3(hh)" for "described in Section 81-18-3(gg) (since redesignated as Section 81-18-3(ii))." The Joint Committee ratified the correction at its July 13, 2011, meeting.

Editor's Note — For the repeal date of this section, see § 81-18-51.

Amendment Notes — The 2007 reenacted and amended the section by substituting "December 31" for "September 30" in the last paragraph of (a); deleting former (c), which provided an exemption for a wholesale lender; redesignating former (d) through (m) as present (c) through (*l*); deleting "mortgage" preceding "company" in (d); in (g), substituting "represents" for "representing" and "on manufactured housing and land transactions, modular homes, or any combination thereof" for "for an investment or on a whole loan basis"; adding the last sentence in (g); substituting "mortgage broker or mortgage lender" for "mortgage company" in (h); and rewriting (*l*).

The first 2009 amendment (ch. 428), inserted "the Fuller Center for Housing, Inc.," following "Habitat for Humanity" in (j).

The second 2009 amendment (ch. 544) rewrote the section to revise the list of persons and entities that are exempt from the provisions of the act.

Cross References — Applicability of this chapter to the activities of retail sellers of manufactured homes, see § 81-18-53.

Multistate licensing system, see § 81-18-61.

Federal Aspects — Section 501(c) of the Internal Revenue Code, referred to in (g), is codified at 26 USCS § 501(c).

§ 81-18-7. Mortgage broker, mortgage lender, or mortgage loan originator licensing requirement; violations [Repealed effective July 1, 2016].

(1) No person shall transact business in this state, directly or indirectly, as a mortgage broker or mortgage lender unless he or she is licensed by the department or is a person exempted from the licensing requirements under Section 81-18-5.

(2) A violation of this section does not affect the obligation of the borrower under the terms of the mortgage loan. The department shall publish and provide for distribution of information regarding approved or revoked licenses.

(3) Every person who directly or indirectly controls a person who violates this section, including a general partner, executive officer, joint venturer, contractor, or director of the person, violates this section to the same extent as the person, unless the person whose violation arises under this subsection shows by a preponderance of evidence the burden of proof that he or she did not know and, in the exercise of reasonable care, could not have known of the existence of the facts by reason of which the original violation is alleged to exist.

(4) An individual, unless specifically exempted from this chapter under Section 81-18-5, shall not engage in the business of a mortgage loan originator with respect to any dwelling located in this state without first obtaining and maintaining annually a license under this chapter. Each licensed mortgage loan originator must register with and maintain a valid unique identifier issued by the Nationwide Mortgage Licensing System and Registry.

(5) In order to facilitate an orderly transition to licensing and minimize disruption in the mortgage marketplace, the effective date of subsection (4) of this section shall be as follows:

(a) For all individuals other than individuals described in paragraph (b), the effective date shall be July 31, 2010, or such later date approved by the Secretary of the United States Department of Housing and Urban Development, under the authority granted under Public Law 110-289, Section 1508(a).

(b) For all individuals licensed as mortgage loan originators as of July 31, 2009, the effective date shall be January 1, 2011, or such later date approved by the Secretary of the United States Department of Housing and Urban Development, under the authority granted under Public Law 110-289, Section 1508(a).

(6) For the purposes of implementing an orderly and efficient licensing process, the commissioner may establish licensing rules or regulations and interim procedures for licensing and acceptance of applications. For previously registered or licensed individuals, the commissioner may establish expedited review and licensing procedures.

SOURCES: Laws, 2000, ch. 579, § 4; reenacted without change, Laws, 2002, ch. 500, § 4; reenacted without change, Laws, 2004, ch. 364, § 4; reenacted and amended, Laws, 2007, ch. 581, § 4; Laws, 2009, ch. 544, § 4; reenacted without change, Laws, 2010, ch. 462, § 4; reenacted without change, Laws, 2012, ch. 571, § 4, eff from and after July 1, 2012.

Editor's Note — For the repeal date of this section, see § 81-18-51.

Cross References — Temporary order to cease business under license issued under authority granted under subsection (6) of this section if it is determined license was erroneously granted or licensee is in violation of this chapter, see § 81-18-43.

Applicability of this chapter to the activities of retail sellers of manufactured homes, see § 81-18-53.

Federal Aspects — Housing and Economic Recovery Act of 2008, Public Law 110-289.

§ 81-18-8. Enactment of local ordinances and regulations in compliance with this chapter authorized [Repealed effective July 1, 2016].

Municipalities and counties in this state may enact ordinances that are in compliance with, but not more restrictive than, the provisions of this chapter. Any order, ordinance or regulation existing on July 1, 2002, or enacted on or after July 1, 2002, that conflicts with this provision shall be null and void.

SOURCES: Laws, 2002, ch. 500, § 5; reenacted without change, Laws, 2004, ch. 364, § 5; reenacted without change, Laws, 2007, ch. 581, § 5; reenacted without change, Laws, 2010, ch. 462, § 5 eff from and after July 1, 2010.

Editor's Note — For the repeal date of this section, see § 81-18-51.

Cross References — Applicability of this chapter to the activities of retail sellers of manufactured homes, see § 81-18-53.

§ 81-18-9. Application for license [Repealed effective July 1, 2016].

(1) Applicants for a license shall apply in a form as prescribed by the commissioner. Each such form shall contain content as set forth by rule, regulation, instruction or procedure of the commissioner and may be changed or updated as necessary by the commissioner in order to carry out the purposes of this chapter.

(2) The mortgage broker and mortgage lender application through the Nationwide Mortgage Licensing System and Registry shall include, but is not limited to, the following:

(a) The legal name, residence and business address of the applicant and, if applicable, the legal name, residence and business address of every principal and executive officer, together with the résumé of the applicant and of every principal and executive officer of the applicant. In addition, an independent credit report obtained from a consumer- reporting agency described in Section 603(p) of the Fair Credit Reporting Act and information related to any administrative, civil or criminal findings by any governmental jurisdiction of every principal and executive officer.

(b) The legal name of the mortgage broker or mortgage lender in addition to the name under which the applicant will conduct business in the state, neither of which may be already assigned to a licensed mortgage broker or mortgage lender.

(c) The complete address of the applicant's principal place of business, branch office(s) and any other locations at which the applicant will engage in any business activity covered by this chapter. All locations shall be within the United States of America or a territory of the United States of America, including Puerto Rico and the U.S. Virgin Islands.

(d) A copy of the certificate of incorporation, if a Mississippi corporation.

(e) Documentation satisfactory to the department as to a certificate of existence of authority to transact business lawfully in Mississippi from the Mississippi Secretary of State's office, if a limited liability company, partnership, trust or any other group of persons, however organized. This paragraph does not pertain to applicants organized as an individual or as a sole proprietorship.

(f) If a foreign entity, a copy of a certificate of authority to conduct business in Mississippi and the address of the principal place of business of the foreign entity.

(g) Documentation of a minimum of two (2) years' experience directly related to mortgage activities by a person named as the qualifying individual of the company. The qualifying individual shall be primarily responsible for the operations of the licensed mortgage broker or mortgage lender. Only one (1) qualifying individual shall be named for Mississippi and this person shall be the qualifying individual for only one (1) licensee. Evidence of experience shall include, where applicable:

(i) Copies of business licenses issued by governmental agencies.

(ii) Employment history of the person filing the application for at least two (2) years before the date of the filing of an application, including, but not limited to, job descriptions, length of employment, names, addresses and phone numbers for past employers.

(iii) Any other data and pertinent information as the department may require with respect to the applicant, its directors, principals, trustees, officers, members, contractors or agents. A résumé alone shall not be sufficient proof of employment history.

(3) The mortgage broker and mortgage lender applications shall be filed on the Nationwide Mortgage Licensing System and Registry together with the following:

(a) The license fee specified in Section 81-18-15;

(b) An original or certified copy of a surety bond in favor of the State of Mississippi for the use, benefit and indemnity of any person who suffers any damage or loss as a result of the company's breach of contract or of any obligation arising therefrom or any violation of law; and

(c) A set of fingerprints from any local law enforcement agency from the following applicants:

(i) All persons operating as a sole proprietorship that plan to conduct a mortgage-brokering or lending business in the State of Mississippi;

(ii) Partners in a partnership or principal owners of a limited liability company that own at least ten percent (10%) of the voting shares of the company;

(iii) Any shareholders owning ten percent (10%) or more of the outstanding shares of the corporation;

(iv) All executive officers of the applicant;

(v) All loan originators; and

(vi) The named qualifying individual of the company as required in Section 81-18-9(2)(g). The applicant shall name only one (1) individual as the qualifying individual for the State of Mississippi.

(d) At least one (1) employee shall be licensed as a loan originator at a licensed location.

(4) In connection with an application for licensing as a mortgage broker or lender under this chapter, the required stockholders, owners, directors and executive officers of the applicant shall, at a minimum, furnish to the Nationwide Mortgage Licensing System and Registry information concerning the individual's identity, including:

(a) Fingerprints from any local law enforcement agency for submission to the Federal Bureau of Investigation and any governmental entity authorized to receive that information for a state, national and international criminal history background check; and

(b) Personal history and experience in a form prescribed by the Nationwide Mortgage Licensing System and Registry, including the submission of authorization for the Nationwide Mortgage Licensing System and Registry and the commissioner to obtain:

(i) An independent credit report obtained from a consumer-reporting agency described in Section 603(p) of the Fair Credit Reporting Act; and

(ii) Information related to any administrative, civil or criminal findings by any governmental jurisdiction.

(5) Upon receipt of an application for licensure, the department or designated third party shall conduct an investigation as it deems necessary to determine that the applicant and its officers, directors and principals are of good character and ethical reputation; that the applicant demonstrates reasonable financial responsibility; and that the applicant has reasonable policies

and procedures to receive and process customer grievances and inquiries promptly and fairly.

(6) The commissioner shall not license an applicant unless he is satisfied that the applicant will operate its mortgage activities in compliance with the laws, rules and regulations of this state and the United States.

(7) If an applicant satisfies the requirements of this chapter for a mortgage broker or mortgage lender license, the commissioner shall issue the license unless the commissioner finds any of the following:

(a) The applicant has had a mortgage lender, mortgage broker or mortgage servicer license revoked in any governmental jurisdiction, except that a subsequent formal vacation of the revocation shall not be deemed a revocation; or

(b) The applicant or its controlling persons has been convicted of, or pled guilty or nolo contendere to, (i) a felony in a domestic, foreign or military court during the seven-year period preceding the date of application for licensing; or (ii) a crime at any time preceding the date of application involving an act of fraud, dishonesty, a breach of trust, or money laundering, or (iii) a misdemeanor of fraud, theft, forgery, bribery, embezzlement or making a fraudulent or false statement in any jurisdiction. However, any pardon or expungement of a conviction shall not be a conviction for purposes of this subsection.

(8) Applicants for a mortgage loan originator license shall apply in a form as prescribed by the commissioner and shall be filed on the Nationwide Mortgage Licensing System and Registry. Each such form shall contain content as set forth by rules, regulations, instructions or procedures of the commissioner and may be changed or updated as necessary by the commissioner in order to carry out the purposes of this chapter. The initial license of a mortgage loan originator shall be accompanied by a fee of Two Hundred Dollars ($200.00), to be paid to the Nationwide Mortgage Licensing System and Registry, and any additional fees as required by the Nationwide Mortgage Licensing System and Registry. The commissioner shall not issue a mortgage loan originator license unless the commissioner makes at a minimum the following findings:

(a) The applicant has never had a mortgage loan originator license revoked in any governmental jurisdiction, except that a later formal vacation of that revocation shall not be deemed a revocation.

(b) The applicant has not been convicted of, or pled guilty or nolo contendere to, (i) a felony in a domestic, foreign or military court during the seven-year period preceding the date of application for licensing; or (ii) a crime at any time preceding the date of application involving an act of fraud, dishonesty, a breach of trust or money laundering; or (iii) a misdemeanor of fraud, theft, forgery, bribery, embezzlement or making a fraudulent or false statement in any jurisdiction. However, any pardon or expungement of a conviction shall not be a conviction for purposes of this subsection.

(c) The applicant has demonstrated financial responsibility, character and general fitness such as to command the confidence of the community and to warrant a determination that the mortgage loan originator will operate honestly, fairly and efficiently within the purposes of this chapter.

(d) The applicant has completed the prelicensing education requirement described in Section 81-18-14(1).

(e) The applicant has passed a written test that meets the test requirement described in Section 81-18-14(7).

(f) The applicant has met the surety bond requirement as provided in Section 81-18-11.

(g) This individual must work for a Mississippi licensed company and work from the location licensed with the department. The licensed location that he or she is assigned to must be within one hundred twenty-five (125) miles of his or her residency. If the licensed loan originator resides and works in Mississippi, then he or she may work from any licensed location of the licensed company within the State of Mississippi. However, an owner of a minimum of ten percent (10%) of a licensed company or the named qualifying individual on file with the department, who is a licensed loan originator with the department, may work from any licensed location of the licensed company within the State of Mississippi in the capacity of a loan originator as described in this chapter.

(9) In order to fulfill the purposes of this chapter, the commissioner is authorized to establish relationships or contracts with the Nationwide Mortgage Licensing System and Registry or other entities designated by the Nationwide Mortgage Licensing System and Registry to collect and maintain records and process transaction fees or other fees related to licensees or other persons subject to this chapter.

(10) In connection with an application for licensing as a mortgage loan originator, the applicant shall, at a minimum, furnish to the Nationwide Mortgage Licensing System and Registry information concerning the applicant's identity, including:

(a) Fingerprints for submission to the Federal Bureau of Investigation, and any governmental agency or entity authorized to receive that information for a state, national and international criminal history background check; and

(b) Personal history and experience in a form prescribed by the Nationwide Mortgage Licensing System and Registry, including the submission of authorization for the Nationwide Mortgage Licensing System and Registry and the commissioner to obtain:

(i) An independent credit report obtained from a consumer — reporting agency described in Section 603(p) of the Fair Credit Reporting Act; and

(ii) Information related to any administrative, civil or criminal findings by any governmental jurisdiction.

(11) For the purposes of this section and in order to reduce the points of contact which the Federal Bureau of Investigation may have to maintain for purposes of subsection (10)(a) and (b)(ii) of this section, the commissioner may use the Nationwide Mortgage Licensing System and Registry as a channeling

agent for requesting information from and distributing information to the Department of Justice or any governmental agency.

(12) For the purposes of this section and in order to reduce the points of contact which the commissioner may have to maintain for purposes of subsection (10)(b)(i) and (ii) of this section, the commissioner may use the Nationwide Mortgage Licensing System and Registry as a channeling agent for requesting and distributing information to and from any source so directed by the commissioner.

SOURCES: Laws, 2000, ch. 579, § 5; reenacted and amended, Laws, 2002, ch. 500, § 6; reenacted without change, Laws, 2004, ch. 364, § 6; reenacted and amended, Laws, 2007, ch. 581, § 6; Laws, 2008, ch. 434, § 3; Laws, 2009, ch. 544, § 5; reenacted and amended, Laws, 2010, ch. 462, § 6; reenacted and amended, Laws, 2012, ch. 571, § 5; Laws, 2013, ch. 499, § 2, eff from and after July 1, 2013.

Editor's Note — For the repeal date of this section, see § 81-18-51.

Cross References — Applicability of this chapter to the activities of retail sellers of manufactured homes, see § 81-18-53.

Multistate licensing system, see § 81-18-61.

Denial, suspension, revocation, condition or nonrenewal of license if applicant or licensee fails to meet requirements of subsection (4) of this section, see § 81-18-43.

Federal Aspects — Section 603(p) of the Fair Credit Reporting Act, 15 USCS § 1681a(p).

§ 81-18-11. Mortgage loan originator surety bond requirement; form; amount [Repealed effective July 1, 2016].

(1) Each mortgage loan originator shall be covered by a surety bond in accordance with this section. If the mortgage loan originator is an employee or exclusive agent of a person subject to this chapter, the surety bond of the person who is subject to this chapter may be used in lieu of the mortgage loan originator's surety bond requirement.

(2) The surety bond shall be in a form as prescribed by the commissioner, and shall provide coverage for each mortgage loan originator in an amount as prescribed in subsection (3) of this section.

(3) The penal sum of the surety bond shall be maintained in an amount as determined by the commissioner by rule or regulation and shall be based upon loan activity during the previous year, but shall not exceed Twenty-five Thousand Dollars ($25,000.00) for a mortgage broker or One Hundred Fifty Thousand Dollars ($150,000.00) for a mortgage lender. For an initial applicant, the bond amount shall be set at Twenty-five Thousand Dollars ($25,000.00) for a mortgage broker and One Hundred Fifty Thousand Dollars ($150,000.00) for a mortgage lender.

(4) When an action is commenced on a licensee's bond, the commissioner may require the filing of a new bond. Immediately upon recovery upon any action on the bond, the licensee shall file a new bond.

(5) All surety bonds shall be in favor, first, of the State of Mississippi for the use, benefit and indemnity of any person who suffers any damage or loss as

a result of the company's breach of contract or of any obligation arising from the contract or any violation of law, and, second, for the payment of any civil penalties, criminal fines, or costs of investigation and/or prosecution incurred by the State of Mississippi, including local law enforcement agencies.

(6) The commissioner may promulgate rules or regulations with respect to the requirements for the surety bonds as are necessary to accomplish the purposes of this chapter.

SOURCES: Laws, 2000, ch. 579, § 6; reenacted without change, Laws, 2002, ch. 500, § 7; reenacted without change, Laws, 2004, ch. 364, § 7; reenacted and amended, Laws, 2007, ch. 581, § 7; Laws, 2009, ch. 544, § 6; reenacted without change, Laws, 2010, ch. 462, § 7; reenacted and amended, Laws, 2012, ch. 571, § 6, eff from and after July 1, 2012.

Editor's Note — For the repeal date of this section, see § 81-18-51.

Cross References — Applicability of this chapter to the activities of retail sellers of manufactured homes, see § 81-18-53.

§ 81-18-13. Authorization to collect and maintain records and process fees related to licensees; timing of grant or denial of request for license [Repealed effective July 1, 2016].

(1) In order to fulfill the purposes of this chapter, the commissioner is authorized to establish relationships or contracts with the Nationwide Mortgage Licensing System and Registry or other entities designated by the Nationwide Mortgage Licensing System and Registry to collect and maintain records and process transaction fees or other fees related to licensees or other persons subject to this chapter.

(2) Within thirty (30) days after receipt of a completed application, final verification from the Department of Public Safety and/or FBI, and payment of licensing fees prescribed by this chapter, the department shall either grant or deny the request for license. However, if the Federal Financial Institutions Examination Council (FFIEC) prescribes a lesser period of time within which the department shall either grant or deny the request for license, then that time limitation shall supersede this subsection.

(3) A person shall not be indemnified for any act covered by this chapter or for any fine or penalty incurred under this chapter as a result of any violation of this chapter or regulations adopted under this chapter, due to the legal form, corporate structure, or choice of organization of the person, including, but not limited to, a limited liability corporation.

SOURCES: Laws, 2000, ch. 579, § 7; reenacted and amended, Laws, 2002, ch. 500, § 8; reenacted without change, Laws, 2004, ch. 364, § 8; reenacted and amended, Laws, 2007, ch. 581, § 8; Laws, 2009, ch. 544, § 7; reenacted and amended, Laws, 2010, ch. 462, § 8; reenacted and amended, Laws, 2012, ch. 571, § 7; Laws, 2013, ch. 499, § 3, eff from and after July 1, 2013.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a publishing error in (4), (5), (7) and (8). The words "this act" were changed to "this chapter." The Joint Committee ratified the correction at its June 3, 2003, meeting.

Editor's Note — For the repeal date of this section, see § 81-18-51.

Cross References — Applicability of this chapter to the activities of retail sellers of manufactured homes, see § 81-18-53.

Multistate licensing system, see § 81-18-61.

Federal Aspects — Section 603(p) of the Fair Credit Reporting Act, 15 USCS § 1681a(p).

§ 81-18-14. Prelicensing education requirements; written test requirement [Repealed effective July 1, 2016].

(1) In order to meet the prelicensing education requirement referred to in Section 81-18-9(4)(d), a person shall complete at least twenty (20) hours of education approved in accordance with subsection (2) of this section, which shall include at least:

(a) Three (3) hours of federal law and regulations;

(b) Three (3) hours of ethics, which shall include instruction on fraud, consumer protection and fair lending issues;

(c) Two (2) hours of training related to lending standards for the nontraditional mortgage product marketplace; and

(d) Four (4) hours of education related to the Mississippi S.A.F.E. Mortgage Act.

(2) For the purposes of subsection (1) of this section, prelicensing education courses shall be reviewed, and approved by the Nationwide Mortgage Licensing System and Registry based upon reasonable standards. Review and approval of a prelicensing education course shall include review and approval of the course provider.

(3) Nothing in this section shall preclude any prelicensing education course, as approved by the Nationwide Mortgage Licensing System and Registry, that is provided by the employer of the applicant or an entity that is affiliated with the applicant by an agency contract, or any subsidiary or affiliate of such employer or entity.

(4) Prelicensing education may be offered either in a classroom, online or by any other means approved by the Nationwide Mortgage Licensing System and Registry.

(5) The prelicensing education requirements approved by the Nationwide Mortgage Licensing System and Registry in subsection (1) of this section for any state shall be accepted as credit towards completion of prelicensing education requirements in Mississippi.

(6) A person previously licensed under this chapter who applies to be licensed again on or after July 1, 2009, must prove that they have completed all of the continuing education requirements for the year in which the license was last held.

(7) In order to meet the written test requirement for mortgage loan originators referred to in Section 81-18-9(4)(e), an individual shall pass, in accordance with the standards established under this subsection, a qualified written test developed by the Nationwide Mortgage Licensing System and

Registry and administered by a test provider approved by the Nationwide Mortgage Licensing System and Registry based upon reasonable standards.

(8) A written test shall not be treated as a qualified written test for purposes of subsection (7) of this section unless the test adequately measures the applicant's knowledge and comprehension in appropriate subject areas, including:

(a) Ethics;

(b) Federal law and regulation pertaining to mortgage origination;

(c) State law and regulation pertaining to mortgage origination; and

(d) Federal and state law and regulation, including instruction on fraud, consumer protection, the nontraditional mortgage marketplace and fair lending issues.

(9) Nothing in this section shall prohibit a test provider approved by the Nationwide Mortgage Licensing System and Registry from providing a test at the location of the employer of the applicant or the location of any subsidiary or affiliate of the employer of the applicant, or the location of any entity with which the applicant holds an exclusive arrangement to conduct the business of a mortgage loan originator.

(10)(a) An individual shall not be considered to have passed a qualified written test unless the individual achieves a test score of not less than seventy-five percent (75%) correct answers to questions.

(b) An individual may retake a test three (3) consecutive times with each consecutive taking occurring at least thirty (30) days after the preceding test.

(c) After failing three (3) consecutive tests, an individual shall wait at least six (6) months before taking the test again.

(d) A licensed mortgage loan originator who fails to maintain a valid license for a period of five (5) years or longer shall retake the test, not taking into account any time during which such individual is a registered mortgage loan originator.

SOURCES: Laws, 2009, ch. 544, § 8; reenacted and amended, Laws, 2010, ch. 462, § 9; reenacted without change, Laws, 2012, ch. 571, § 8, eff from and after July 1, 2012.

Editor's Note — For the repeal date of this section, see § 81-18-51.

Cross References — Applicability of this chapter to the activities of retail sellers of manufactured homes, see § 81-18-53.

§ 81-18-15. Mortgage broker, mortgage lender and mortgage loan originator license renewal procedures; license fees; annual continuing education requirements for mortgage loan originators [Repealed effective July 1, 2016].

(1) Each mortgage broker and mortgage lender license shall remain in full force and effect until relinquished, suspended, revoked or expired. With each initial application for a license to operate as a mortgage broker or mortgage lender, the applicant shall pay through the Nationwide Mortgage Licensing

System and Registry to the commissioner a license fee of One Thousand Five Hundred Dollars ($1,500.00); however, if the initial mortgage broker or mortgage lender license is issued between November 1 and December 31, the license will expire December 31 of the following licensing year. Upon the expiration of the initial license, the licensee shall pay an annual renewal fee of One Thousand Dollars ($1,000.00) on or before December 31 of each year. If the annual renewal fee remains unpaid, the license shall expire, but not before December 31 of any year for which the annual renewal fee has been paid. If the renewal fee is not paid before the expiration date of the license, then the licensee shall be liable for the initial license fee, which is One Thousand Five Hundred Dollars ($1,500.00), plus a penalty in an amount not to exceed Twenty-five Dollars ($25.00) for each day after the expiration of the license. All licensing fees and penalties shall be paid into the Consumer Finance Fund of the department. If the application is withdrawn or denied, the application fee along with any other applicable fee are not refundable.

(2) The minimum standards for license renewal for mortgage loan originators shall include the following:

(a) The mortgage loan originator continues to meet the minimum standards for license issuance under Section 81-18-9(4).

(b) The mortgage loan originator has satisfied the annual continuing education requirements described in Section 81-18-15(5).

(c) The mortgage loan originator has paid all required fees for renewal of the license. Annual renewals of this license shall require a fee of One Hundred Dollars ($100.00).

(3) The license of a mortgage loan originator failing to satisfy the minimum standards for license renewal shall expire. The commissioner may adopt procedures for the reinstatement of expired licenses consistent with the standards established by the Nationwide Mortgage Licensing System and Registry. If the renewal fee remains unpaid, the license shall expire, but not before December 31 of any year for which the annual renewal fee has been paid. However, if the initial loan originator license is issued between November 1 and December 31, the license will expire December 31 of the following licensing year. If the renewal fee is not paid before the expiration date of the license, the mortgage loan originator shall be liable for the initial license fee, which is Two Hundred Dollars ($200.00), in order to renew.

(4) Any licensee making timely and proper application for a license renewal shall be permitted to continue to operate under its existing license until its application is approved or rejected, but shall not be released from or otherwise indemnified for any act covered by this chapter or for any penalty incurred under this chapter as a result of any violation of this chapter or regulations adopted under this chapter, pending final approval or disapproval of the application for the license renewal.

(5) In order to meet the annual continuing education requirements referred to in Section 81-18-15(2)(b), a licensed mortgage loan originator shall complete at least twelve (12) hours of education approved in accordance with subsection (2) of this section, which shall include at least:

(a) Three (3) hours of federal law and regulations;

(b) Two (2) hours of ethics, which shall include instruction on fraud, consumer protection and fair lending issues;

(c) Two (2) hours of training related to lending standards for the nontraditional mortgage product marketplace; and

(d) Two (2) hours of education related to the Mississippi S.A.F.E. Mortgage Act.

(6) For the purposes of subsection (5) of this section, continuing education courses shall be reviewed, and approved by the Nationwide Mortgage Licensing System and Registry based upon reasonable standards. Review and approval of a continuing education course shall include review and approval of the course provider.

(7) Nothing in this section shall preclude any education course, as approved by the Nationwide Mortgage Licensing System and Registry, that is provided by the employer of the mortgage loan originator or an entity that is affiliated with the mortgage loan originator by an agency contract, or any subsidiary or affiliate of such employer or entity.

(8) Continuing education may be offered either in a classroom, online or by any other means approved by the Nationwide Mortgage Licensing System and Registry.

(9) A licensed mortgage loan originator:

(a) Except for Section 81-18-15(3) and subsection (13) of this section, may only receive credit for a continuing education course in the year in which the course is taken; and

(b) May not take the same approved course in the same or successive years to meet the annual requirements for continuing education.

(10) A licensed mortgage loan originator who is an approved instructor of an approved continuing education course may receive credit for the licensed mortgage loan originator's own annual continuing education requirement at the rate of two (2) hours credit for every one (1) hour taught.

(11) A person having successfully completed the education requirements approved by the Nationwide Mortgage Licensing System and Registry in subsection (5) of this section for any state shall be accepted as credit towards completion of continuing education requirements in Mississippi.

(12) A licensed mortgage loan originator who later becomes unlicensed must complete the continuing education requirements for the last year in which the license was held prior to issuance of a new or renewed license.

(13) A person meeting the requirements of Section 81-18-15(2)(a) and (c) may make up any deficiency in continuing education as established by rule or regulation of the commissioner.

SOURCES: Laws, 2000, ch. 579, § 8; reenacted and amended, Laws, 2002, ch. 500, § 9; reenacted and amended, Laws, 2004, ch. 364, § 9; reenacted and amended, Laws, 2007, ch. 581, § 9; Laws, 2008, ch. 434, § 4; Laws, 2009, ch. 544, § 9; reenacted and amended, Laws, 2010, ch. 462, § 10; reenacted without change, Laws, 2012, ch. 571, § 9; Laws, 2013, ch. 499, § 4, eff from and after July 1, 2013.

Editor's Note — For the repeal date of this section, see § 81-18-51.

Cross References — Applicability of this chapter to the activities of retail sellers of manufactured homes, see § 81-18-53.

Multistate licensing system, see § 81-18-61.

Denial, suspension, revocation, condition or nonrenewal of license if applicant or licensee fails to meet requirements of subsection (2) of this section, see § 81-18-43.

§ 81-18-17. License nontransferable and nonassignable; notification to department of change in address, location, officers, etc.; department approval required for opening of branch office; notification to department of release of loan originator from employment; notification to department of change of qualifying individual of licensee [Repealed effective July 1, 2016].

(1) A license may not be transferred or assigned.

(2) No licensee shall transact business under any name other than that designated in the license.

(3) A licensed mortgage broker or mortgage lender shall notify the department through the Nationwide Mortgage Licensing System and Registry of any change in the address of its principal place of business or of any change in the address of an additional licensed branch location within thirty (30) days of the change.

(4) No licensee shall open a branch office in this state or a branch office outside this state from which the licensee has direct contact with consumers regarding origination or brokering Mississippi residential property, without prior approval of the department. An application for any branch office shall be made through the Nationwide Mortgage Licensing System and Registry on a form prescribed by the department, which shall include at least evidence of compliance with subsection (1) of Section 81-18-25 as to that branch and shall be accompanied by payment of a nonrefundable application fee of Three Hundred Dollars ($300.00) and at least one (1) loan originator application licensed at that branch office. The application shall be approved unless the department finds that the applicant has not conducted business under this chapter in accordance with law. Each branch office that currently holds a branch license shall renew that branch license before the expiration date of the main company license, on or before December 31; however, if the initial branch license is issued between November 1 and December 31, the license will expire December 31 of the following licensing year. The license renewal shall be on a form prescribed by the department with a nonrefundable renewal application fee of One Hundred Dollars ($100.00). If the annual renewal fee remains unpaid, the license shall expire, but not before December 31 of any year for which the annual renewal fee has been paid. If the renewal fee is not paid before the expiration date of the license, the branch shall be liable for the initial license fee, which is Three Hundred Dollars ($300.00), in order to renew.

(5) A licensed mortgage broker or mortgage lender shall notify the department within thirty (30) days by submitting a sponsorship removal in the

Nationwide Mortgage Licensing System and Registry when a loan originator is released from its employment. In addition, the licensed mortgage broker or mortgage lender shall notify the department within thirty (30) days through the Nationwide Mortgage Licensing System and Registry when there is a change of the qualifying individual of the licensee.

SOURCES: Laws, 2000, ch. 579, § 9; reenacted and amended, Laws, 2002, ch. 500, § 10; reenacted and amended, Laws, 2004, ch. 364, § 10; reenacted and amended, Laws, 2007, ch. 581, § 10; Laws, 2008, ch. 434, § 5; Laws, 2009, ch. 544, § 10; reenacted and amended, Laws, 2010, ch. 462, § 11; reenacted and amended, Laws, 2012, ch. 571, § 10; Laws, 2013, ch. 499, § 5, eff from and after July 1, 2013.

Editor's Note — For the repeal date of this section, see § 81-18-51.

Cross References — Applicability of this chapter to the activities of retail sellers of manufactured homes, see § 81-18-53.

Multistate licensing system, see § 81-18-61.

§ 81-18-19. Acquisition of interest in licensee [Repealed effective July 1, 2016].

(1) Except as provided in this section, no person shall acquire directly or indirectly ten percent (10%) or more of the voting shares of a corporation or ten percent (10%) or more of the ownership of any other entity licensed to conduct business under this chapter unless it first files an application in accordance with the requirements prescribed in Section 81-18-9.

(2) Upon the filing and investigation of an application, the department shall permit the applicant to acquire the interest in the licensee if it is satisfied and finds that the applicant and its members, if applicable, its directors and officers, if a corporation, and any proposed new directors and officers have provided its surety bond and have the character, reputation and experience to warrant belief that the business will be operated fairly and in accordance with the law. If the application is denied, the department shall notify the applicant of the denial and the reasons for the denial.

(3) A decision of the department denying a license, original or renewal, shall be conclusive, except that the applicant may seek judicial review in the Chancery Court of the First Judicial District of Hinds County, Mississippi.

(4) The provisions of this section do not apply to the following, subject to notification as required in this section:

(a) The acquisition of an interest in a licensee directly or indirectly including an acquisition by merger or consolidation by or with a person licensed under this chapter or exempt from this chapter under Section 81-18-5.

(b) The acquisition of an interest in a licensee directly or indirectly including an acquisition by merger or consolidation by or with a person affiliated through common ownership with the licensee.

(c) The acquisition of an interest in a licensee by a person by bequest, devise, gift or survivorship or by operation of law.

(5) A person acquiring an interest in a licensee in a transaction that is requesting exemption from filing an application for approval of the application shall send a written request to the department for an exemption within thirty (30) days before the closing of the transaction.

SOURCES: Laws, 2000, ch. 579, § 10; reenacted and amended, Laws, 2002, ch. 500, § 11; reenacted and amended, Laws, 2004, ch. 364, § 11; reenacted without change, Laws, 2007, ch. 581, § 11; Laws, 2008, ch. 434, § 6; Laws, 2009, ch. 544, § 11; reenacted without change, Laws, 2010, ch. 462, § 12; reenacted and amended, Laws, 2012, ch. 571, § 11, eff from and after July 1, 2012.

Editor's Note — For the repeal date of this section, see § 81-18-51.

Cross References — Applicability of this chapter to the activities of retail sellers of manufactured homes, see § 81-18-53.

§ 81-18-21. Maintenance and investigation of business records; biennial investigation; examination fee; department authorized to examine persons suspected of conducting business requiring a license; licensee to make records and books available to commissioner and compile reports; commissioner may control access to records of licensee under investigation [Repealed effective July 1, 2016].

(1) Any person required to be licensed under this chapter shall maintain in its offices, or such other location as the department shall permit, the books, accounts and records necessary for the department to determine whether or not the person is complying with the provisions of this chapter and the rules and regulations adopted by the department under this chapter. These books, accounts and records shall be maintained apart and separate from any other business in which the person is involved and may represent historical data for three (3) years preceding the date of the last license application date forward. The books, accounts and records shall be kept in a secure location under conditions that will not lead to their damage or destruction. If the licensee wishes to keep the files in a location other than the location listed on the license, then the licensee first must submit a written request on a form designated by the department and gain written approval from the commissioner before storing the files at an off-site secure location.

(2) To assure compliance with the provisions of this chapter, the department may examine the books and records of any licensee without notice during normal business hours. The commissioner shall charge the licensee an examination fee in an amount not less than Three Hundred Dollars ($300.00) nor more than Six Hundred Dollars ($600.00) per day with a maximum examination fee of Two Thousand Four Hundred Dollars ($2,400.00) for each office or location within the State of Mississippi, and an examination fee in an amount not less than Three Hundred Dollars ($300.00) nor more than Eight Hundred Dollars ($800.00) per day for each office or location outside the State of Mississippi, plus any actual expenses incurred while examining the licensee's

records or books that are located outside the State of Mississippi. However, in no event shall a licensee be examined more than once in a two-year period unless for cause shown based upon consumer complaint and/or other exigent reasons as determined by the commissioner.

(3) The department, its designated officers and employees, or its duly authorized representatives, for the purposes of discovering violations of this chapter and for the purpose of determining whether any person or individual reasonably suspected by the commissioner of conducting business that requires a license under this chapter, may investigate those persons and individuals and examine all relevant books, records and papers employed by those persons or individuals in the transaction of business, and may summon witnesses and examine them under oath concerning matters as to the business of those persons, or other such matters as may be relevant to the discovery of violations of this chapter, including, without limitation, the conduct of business without a license as required under this chapter.

(4) Each licensee, individual or person subject to this chapter shall make available to the commissioner upon request the books and records relating to the operations of the licensee, individual or person subject to this chapter. The commissioner shall have access to those books and records and interview the officers, principals, mortgage loan originators, employees, independent contractors, agents, and customers of the licensee, individual or person subject to this chapter concerning their business.

(5) Each licensee, individual or person subject to this chapter shall make or compile reports or prepare other information as directed by the commissioner in order to carry out the purposes of this section, including, but not limited to:

(a) Accounting compilations;

(b) Information lists and data concerning loan transactions in a format prescribed by the commissioner; or

(c) Such other information deemed necessary to carry out the purposes of this section.

(6) In making any examination or investigation authorized by this chapter, the commissioner may control access to any documents and records of the licensee or person under examination or investigation. The commissioner may take possession of the documents and records or place a person in exclusive charge of the documents and records in the place where they are usually kept. During the period of control, no individual or person shall remove or attempt to remove any of the documents and records except under a court order or with the consent of the commissioner. Unless the commissioner has reasonable grounds to believe the documents or records of the licensee have been or are at risk of being altered or destroyed for purposes of concealing a violation of this chapter, the licensee or owner of the documents and records shall have access to the documents or records as necessary to conduct its ordinary business affairs.

(7) The commissioner shall report regularly violations of this chapter, as well as enforcement actions and other relevant information, to the Nationwide

Mortgage Licensing System and Registry subject to the provisions contained in Section 81-18-63.

(8) Examinations and investigations conducted under this chapter and information obtained by the department, except as provided in subsection (7) of this section, in the course of its duties under this chapter are confidential.

(9) In the absence of malice, fraud or bad faith a person is not subject to civil liability arising from the filing of a complaint with the department, furnishing other information required by this chapter, information required by the department under the authority granted in this chapter, or information voluntarily given to the department related to allegations that a licensee or prospective licensee has violated this chapter.

(10) In order to carry out the purposes of this section, the commissioner may:

(a) Accept and rely on examination or investigation reports made by other government officials, within or without this state; or

(b) Accept audit reports made by an independent certified public accountant for the licensee, individual or person subject to this chapter in the course of that part of the examination covering the same general subject matter as the audit and may incorporate the audit report in the report of the examination, report of investigation or other writing of the commissioner.

(11) The authority of this section shall remain in effect, whether such a licensee, individual or person subject to this chapter acts or claims to act under any licensing or registration law of this state, or claims to act without that authority.

(12) No licensee, individual or person subject to investigation or examination under this section may knowingly withhold, abstract, remove, mutilate, destroy or secrete any books, records, computer records or other information.

SOURCES: Laws, 2000, ch. 579, § 11; reenacted and amended, Laws, 2002, ch. 500, § 12; reenacted and amended, Laws, 2004, ch. 364, § 12; reenacted and amended, Laws, 2007, ch. 581, § 12; Laws, 2009, ch. 544, § 12; reenacted without change, Laws, 2010, ch. 462, § 13; reenacted without change, Laws, 2012, ch. 571, § 12; Laws, 2013, ch. 499, § 6, eff from and after July 1, 2013.

Editor's Note — For the repeal date of this section, see § 81-18-51.

Cross References — Applicability of this chapter to the activities of retail sellers of manufactured homes, see § 81-18-53.

§ 81-18-23. Annual written report by licensee [Repealed effective July 1, 2016].

(1) Each mortgage licensee shall submit to the Nationwide Mortgage Licensing System and Registry reports of condition, which shall be in such form and shall contain such information as the Nationwide Mortgage Licensing System and Registry may require.

(2) The department, in its discretion, may relieve any company from the payment of any penalty, in whole or in part, for good cause.

(3) If a company fails to pay a penalty from which it has not been relieved, the department may maintain an action at law to recover the penalty.

(4) Within fifteen (15) days of the occurrence of any of the following events, a company shall file with the Nationwide Mortgage Licensing System and Registry the applicable change in the disclosure questions and shall submit the information through the Nationwide Mortgage Licensing System and Registry or file a written report with the commissioner describing the event and its expected impact on the activities of the company in this state:

(a) The filing for bankruptcy or reorganization by the company;

(b) The institution of revocation or suspension proceedings against the company by any state or governmental authority;

(c) Any felony indictment of the company or any of its directors, executive officers, qualifying individual or loan originators;

(d) Any felony conviction of the company or any of its directors, executive officers, qualifying individual or loan originators; or

(e) Any misdemeanor conviction, in which fraud is an essential element, of any of the company's directors, executive officers, qualifying individual or loan originators.

(5) Licensees who are involved in civil actions shall notify the Nationwide Mortgage Licensing System and Registry within sixty (60) days of the occurrence. An explanation and supporting documentation for each civil action concerning the company shall be submitted through the Nationwide Mortgage Licensing System and Registry. The department may require additional information as necessary.

SOURCES: Laws, 2000, ch. 579, § 12; reenacted without change, Laws, 2002, ch. 500, § 13; reenacted and amended, Laws, 2004, ch. 364, § 13; reenacted and amended, Laws, 2007, ch. 581, § 13; Laws, 2008, ch. 434, § 7; Laws, 2009, ch. 544, § 13; reenacted and amended, Laws, 2010, ch. 462, § 14; reenacted without change, Laws, 2012, ch. 571, § 13; Laws, 2013, ch. 499, § 7, eff from and after July 1, 2013.

Editor's Note — For the repeal date of this section, see § 81-18-51.

Cross References — Applicability of this chapter to the activities of retail sellers of manufactured homes, see § 81-18-53.

§ 81-18-25. Requirements for principal place of business and branch offices [Repealed effective July 1, 2016].

(1) Each principal place of business and branch office in the state shall meet all of the following requirements:

(a) Be in compliance with local zoning ordinances and have posted any licenses required by local government agencies. It is the responsibility of the licensee to meet local zoning ordinances and obtain the required occupational licenses; however, zoning cannot be residential. If there is no zoning in the area, then the person shall submit to the department a letter from the city or county stating that there is no zoning.

(b) Consist of at least one (1) secure enclosed room or secure building of stationary construction in which negotiations of mortgage loan transactions may be conducted in privacy. Stationary construction does not include the use of portable buildings. If there is no zoning in the requested location and the property is used for residential purposes, then the person shall utilize an enclosed room with a dedicated outside door.

(c) Display a permanent sign outside the place of business readily visible to the general public, unless the display of sign violates local zoning ordinances or restrictive covenants. The sign must contain the name of the licensee and the words "Mississippi Licensed Mortgage Company" or, if the initial license is obtained after July 1, 2007, the words "Licensed by the Mississippi Department of Banking and Consumer Finance." The signage shall also contain the Nationwide Mortgage Licensing System and Registry Unique Identifier issued to that particular licensed location.

(2) If one (1) of the following is correct, then that location shall be licensed as a mortgage broker or mortgage lender under this chapter and not as a branch:

(a) It is a separate entity operating as an independent business or mortgage operation which is not under the direct control, management supervision and responsibility of the licensee;

(b) The licensee is not the lessee or owner of the branch and the branch is not under the direct and daily ownership, control, management and supervision of the licensee;

(c) All assets and liabilities of the branch are not assets and liabilities of the licensee, and all income and expenses of the branch are income and expenses of the licensee and properly accounted for in the financial records and tax returns of the licensee; or

(d) All practices, policies and procedures, including, but not limited to, those relating to employment and operations, are not originated and established by the licensee or registered company and are not applied consistently to the principal place of business and all branches.

Nothing in this subsection (2) shall affect or change, or be construed as affecting or changing, the existing statutory law and common law on agency, principal and agent, independent contractors, and parent and subsidiary companies.

SOURCES: Laws, 2000, ch. 579, § 13; reenacted and amended, Laws, 2002, ch. 500, § 14; reenacted and amended, Laws, 2004, ch. 364, § 14; reenacted and amended, Laws, 2007, ch. 581, § 14; Laws, 2009, ch. 544, § 14; reenacted without change, Laws, 2010, ch. 462, § 15; reenacted and amended, Laws, 2012, ch. 571, § 14, eff from and after July 1, 2012.

Editor's Note — For the repeal date of this section, see § 81-18-51.

Cross References — Applicability of this chapter to the activities of retail sellers of manufactured homes, see § 81-18-53.

§ 81-18-27. Prohibited acts; licensed mortgage broker or mortgage lender to broker residential mortgage loan only to licensed mortgage brokers or mortgage lenders or exempt persons [Repealed effective July 1, 2016].

(1) No person required to be licensed under this chapter shall:

(a) Directly or indirectly employ any scheme, device or artifice to defraud or mislead borrowers or lenders or to defraud any person.

(b) Misrepresent to or conceal from an applicant for a mortgage loan or mortgagor, material facts, terms or conditions of a transaction to which the licensee is a party.

(c) Fail to disburse funds in accordance with a written commitment or agreement to make a mortgage loan.

(d) Fail to truthfully account for monies belonging to a party to a residential mortgage loan transaction.

(e) Improperly refuse to issue a satisfaction of a mortgage loan.

(f) Fail to account for or deliver to any person any personal property obtained in connection with a mortgage loan, such as money, funds, deposits, checks, drafts, mortgages or other documents or things of value that have come into the possession of the licensee and that are not the property of the licensee, or that the licensee is not by law or at equity entitled to retain.

(g) Engage in any transaction, practice, or course of business that is not in good faith, or that operates a fraud upon any person in connection with the making of or purchase or sale of any mortgage loan, including the use of correction fluid on any document associated with the mortgage loan.

(h) Engage in any fraudulent residential mortgage underwriting practices, which include, but are not limited to, making in any manner, any false or deceptive statement or representation including, with regard to the rates, points or other financing terms or conditions for a residential mortgage loan, or engage in bait and switch advertising.

(i) Solicit or enter into a contract with a borrower that provides in substance that the person or individual subject to this chapter may earn a fee or commission through "best efforts" to obtain a loan even though no loan is actually obtained for the borrower.

(j) Induce, require, or otherwise permit the applicant for a mortgage loan or mortgagor to sign a security deed, note, or other pertinent financial disclosure documents with any blank spaces to be filled in after it has been signed, except blank spaces relating to recording or other incidental information not available at the time of signing.

(k) Make, directly or indirectly, any residential mortgage loan with the intent to foreclose on the borrower's property. For purposes of this paragraph, there is a presumption that a person has made a residential mortgage loan with the intent to foreclose on the borrower's property if any of the following circumstances are proven:

(i) Lack of substantial benefit to the borrower;

(ii) The probability that full payment of the loan cannot be made by the borrower;

(iii) That the person has made a significant proportion of loans foreclosed under similar circumstances;

(iv) That the person has provided an extension of credit or collected a mortgage debt by extortion;

(v) That the person does business under a trade name that misrepresents or tends to misrepresent that the person is a bank, trust company, savings bank, savings and loan association, credit union, or insurance company.

(*l*) Charge or collect any direct payment, compensation or advance fee from a borrower unless and until a loan is actually found, obtained and closed for that borrower, and in no event shall that direct payment, compensation or advance fee exceed seven and ninety-five one-hundredths percent (7.95%) of the original principal amount of the loan, and any such direct payments, compensation or advance fees shall be included in all annual percentage rate (APR) calculations if required under Regulation Z of the federal Truth in Lending Act (TILA). A direct payment, compensation or advance fee as defined in this section shall not include:

(i) Any direct payment, compensation or advance fee collected by a licensed mortgage broker or mortgage lender to be paid to a nonrelated third party;

(ii) Any indirect payment to a licensed mortgage broker or mortgage lender by a lender if those fees are not required to be disclosed under the Real Estate Settlement Procedures Act (RESPA);

(iii) Any indirect payment or compensation by a lender to a licensee required to be disclosed by the licensee under RESPA, provided that the payment or compensation is disclosed to the borrower by the licensee on a good faith estimate of costs, is included in the APR if required under Regulation Z of TILA, and is made pursuant to a written agreement between the licensee and the borrower as may be required by Section 81-18-33;

(iv) A fee not to exceed one percent (1%) of the principal amount of a loan for construction, provided that a binding commitment for the loan has been obtained for the prospective borrower; or

(v) An advance fee, known as a lock-in fee, collected by a licensee to be paid to a lender to lock in an interest rate and/or a certain number of points on a mortgage loan from the lender as provided in Section 81-18-28.

(m) Pay to any person not licensed under the provisions of this chapter any commission, bonus or fee in connection with arranging for or originating a mortgage loan for a borrower, except that a licensed loan originator may be paid a bonus, commission, or fee by his or her licensed employer.

(n) Refuse to provide the loan payoff within three (3) business days of an oral or written request from a borrower or third party. Proof of authorization of the borrower shall be submitted for a third-party request.

(o) Knowingly withhold, extract, remove, mutilate, destroy or conceal any books, records, computer records or other information which are required by law to be disclosed.

(p) Negligently make any false statement or knowingly and willfully make any omission of material fact in connection with any information or reports filed with a governmental agency or the Nationwide Mortgage Licensing System and Registry or in connection with any investigation conducted by the commissioner or another governmental agency.

(q) Fail to comply with this chapter or rules or regulations promulgated under this chapter, or fail to comply with any other state or federal law, including the rules and regulations under that law, applicable to any business authorized or conducted under this chapter.

(r) Conduct any business covered by this chapter without holding a valid license as required under this chapter, or assist or aid and abet any person in the conduct of business under this chapter without a valid license as required under this chapter.

(s) Make any payment, threat or promise, directly or indirectly, to any person for the purposes of influencing the independent judgment of the person in connection with a residential mortgage loan, or make any payment threat or promise, directly or indirectly, to any appraiser of a property, for the purposes of influencing the independent judgment of the appraiser with respect to the value of the property.

(t) Solicit, advertise or enter into a contract for specific interest rates, points or other financing terms unless the terms are actually available at the time of soliciting, advertising or contracting.

(u) Fail to make disclosures as required by this chapter and any other applicable state or federal law including regulations under that law.

(v) Cause or require a borrower to obtain property insurance coverage in an amount that exceeds the replacement cost of the improvements as established by the property insurer.

(2) A licensed mortgage broker or mortgage lender shall only broker a residential mortgage loan to a mortgage broker or mortgage lender licensed under this chapter or to a person exempt from licensure under the provisions of this chapter.

(3) No nonbanking entity may use any sign or handwritten or printed paper indicating that it is a bank, savings bank, trust company or place of banking. No entity may use the word “bank,” “savings bank,” “banking,” “banker” or “trust company,” or the equivalent or plural of any of these words, in connection with any business other than that of banking. This subsection does not prohibit a person from acting in a trust capacity.

(4) No person shall use the name or logo of any banking entity in connection with the sale, offering for sale, or advertising of any financial product or service without the express written consent of the banking entity.

(5) No unlicensed Mississippi location of a Mississippi licensed mortgage broker or mortgage lender may advertise mortgage services if the unlicensed location is more than fifty (50) miles from a licensed Mississippi location.

SOURCES: Laws, 2000, ch. 579, § 14; reenacted and amended, Laws, 2002, ch. 500, § 15; reenacted and amended, Laws, 2004, ch. 364, § 15; Laws, 2006, ch. 451, § 1; reenacted and amended, Laws, 2007, ch. 581, § 15; Laws, 2009, ch.

544, § 15; reenacted without change, Laws, 2010, ch. 462, § 16; reenacted without change, Laws, 2012, ch. 571, § 15, eff from and after July 1, 2012.

Editor's Note — For the repeal date of this section, see § 81-18-51.

Cross References — Applicability of this chapter to the activities of retail sellers of manufactured homes, see § 81-18-53.

Federal Aspects — Regulation Z of the Truth in Lending Act is codified at 12 CFR Part 226.

The Truth in Lending Act is codified at 15 USCS §§ 1601 et seq.

JUDICIAL DECISIONS

1. Violation not shown.

The amount of compensation allowable for a mortgage broker is not to exceed 7.95 percent; a home buyer's claim against a bank under the Real Estate Settlement Procedures Act, 12 U.S.C.S. § 2601 et seq., failed to show any specific violation of the act, and therefore, the bank was entitled to summary judgment. Tidwell v. Homestar Real Estate Servs., 290 F. Supp. 2d 729 (S.D. Miss. 2003).

§ 81-18-28. Maximum lock-in fee; contents of lock-in fee agreement [Repealed effective July 1, 2016].

(1) A licensed mortgage broker or mortgage lender may enter into lock-in agreements and collect a lock-in fee from a borrower on the lender's behalf. The lock-in fee shall not exceed the following:

(a) No fee may be collected to lock in for sixty (60) days or less;

(b) One percent (1%) of the principal amount of the loan to lock in for more than sixty (60) days, but not to exceed one hundred eighty (180) days;

(c) One and one-half percent (1-½%) of the principal amount of the loan to lock in for more than one hundred eighty (180) days, but not to exceed two hundred seventy (270) days; or

(d) Two percent (2%) of the principal amount of the loan to lock in for more than two hundred seventy (270) days.

(2) Before the collection of a lock-in fee, the applicant must be provided a copy of the lock-in fee agreement. This agreement shall contain at least the following:

(a) Identification of the property that is being purchased with the loan;

(b) The principal amount and term of the loan;

(c) The initial interest rate and/or points, whether the interest rate is fixed or variable, and if variable, the index and margin, or the method by which an interest rate change for the mortgage loan will be calculated;

(d) The amount of the lock-in fee, whether the fee is refundable or nonrefundable, the time by which the lock-in fee must be paid to the lender, and if the fee is refundable, the terms and conditions necessary to obtain the refund; and

(e) The length of the lock-in period that the agreement covers.

SOURCES: Laws, 2006, ch. 451, § 2; reenacted and amended, Laws, 2007, ch. 581, § 16; reenacted without change, Laws, 2010, ch. 462, § 17; reenacted without change, Laws, 2012, ch. 571, § 16, eff from and after July 1, 2012.

Editor's Note — For the repeal date of this section, see § 81-18-51.

Cross References — Prohibited acts; licensed mortgage broker or mortgage lender to broker residential mortgage loan only to licensed mortgage brokers or mortgage lenders or exempt persons, see § 81-18-27.

Applicability of this chapter to the activities of retail sellers of manufactured homes, see § 81-18-53.

§ 81-18-29. Promulgation of rules and regulations [Repealed effective July 1, 2016].

The commissioner shall promulgate those rules and regulations, not inconsistent with law, necessary for the enforcement of this chapter.

SOURCES: Laws, 2000, ch. 579, § 15; reenacted without change, Laws, 2002, ch. 500, § 16; reenacted without change, Laws, 2004, ch. 364, § 16; reenacted and amended, Laws, 2007, ch. 581, § 17; reenacted without change, Laws, 2010, ch. 462, § 18; reenacted without change, Laws, 2012, ch. 571, § 17, eff from and after July 1, 2012.

Editor's Note — For the repeal date of this section, see § 81-18-51.

Cross References — Applicability of this chapter to the activities of retail sellers of manufactured homes, see § 81-18-53.

§ 81-18-31. Regulations governing advertising of mortgage loans [Repealed effective July 1, 2016].

The department shall promulgate regulations governing the advertising of mortgage loans, including, but not limited to, the following requirements:

(a) That all advertisements for loans regulated under this chapter may not be false, misleading or deceptive. No person whose activities are regulated under this chapter may advertise in any manner so as to indicate or imply that its interest rates or charges for loans are "recommended," "approved," "set" or "established" by the State of Mississippi;

(b) That all licensees shall maintain a copy of all advertisements citing interest rates or payment amounts primarily disseminated in this state and shall attach to each advertisement documentation that provides corroboration of the availability of the interest rate and terms of loans and names the specific media sources by which the advertisements were distributed;

(c) That all published advertisements disseminated primarily in this state by a license shall contain the name and an office address of the licensee, which shall be the same as the name and address of the licensee on record with the department;

(d) That an advertisement containing either a quoted interest rate or monthly payment amount must include:

(i) The interest rate of the mortgage, a statement as to whether the rate is fixed or adjustable, and the adjustment index and frequency of adjustments;

(ii) The term in years or months to fully repay the mortgage;

(iii) The APR as computed under federal guidelines; and

(e) That no licensee shall advertise its services in Mississippi in any media disseminated primarily in this state, whether print or electronic, without the words "Mississippi Licensed Mortgage Company" or, if the initial license is obtained after July 1, 2007, the words "Licensed by the Mississippi Department of Banking and Consumer Finance."

(f) That the unique identifier of any person originating a residential mortgage loan shall be clearly shown on all residential mortgage loan application forms, solicitations or advertisements, including business cards or Web sites, and any other documents as established by rule, regulation or order of the commissioner.

SOURCES: Laws, 2000, ch. 579, § 16; reenacted and amended, Laws, 2002, ch. 500, § 17; reenacted and amended, Laws, 2004, ch. 364, § 17; reenacted and amended, Laws, 2007, ch. 581, § 18; Laws, 2009, ch. 544, § 16; reenacted without change, Laws, 2010, ch. 462, § 19; reenacted without change, Laws, 2012, ch. 571, § 18, eff from and after July 1, 2012.

Editor's Note — For the repeal date of this section, see § 81-18-51.

Cross References — Applicability of this chapter to the activities of retail sellers of manufactured homes, see § 81-18-53.

§ 81-18-33. Required contents of individual borrower files [Repealed effective July 1, 2016].

The individual borrower files of a licensee shall contain at least the following:

(a) A mortgage origination agreement provided to the borrower containing at least the following statements:

(i) "As required by Mississippi Law, (licensed company name) has secured a bond issued by (name of insurance company), a surety company authorized to do business in this state. A certified copy of this bond is filed with the Mississippi Commissioner of Banking and Consumer Finance."

(ii) "As a borrower you are protected under the Mississippi S.A.F.E. Mortgage Act."

(iii) "Complaints against a licensee may be made by contacting the:
Mississippi Department of Banking and
Consumer Finance
P.O. Drawer 23729
Jackson, MS 39225-3729";

(b) A copy of the original loan application signed and dated by the licensee;

(c) A copy of the signed closing statement as required by HUD or documentation of denial or cancellation of the loan application;

(d) A copy of the good-faith estimate of costs provided to the borrower;

(e) A copy of the appraisal or statement of value if procured as a part of the loan application process;

(f) A copy of a loan lock-in agreement, if any, provided by the licensee;

(g) A copy of the disclosures required under Regulation Z of the federal Truth In Lending Act and other disclosures as required under federal regulations and evidence that those disclosures have been properly and timely made to the borrower; and

(h) A copy of the final signed Uniform Residential Loan Application. However, any mortgage licensee who holds a license under the provisions of the Small Loan Regulatory Law, Section 75-67-101 et seq., and the Small Loan Privilege Tax Law, Section 75-67-201 et seq., may substitute an application that is otherwise compliant with federal and state law.

SOURCES: Laws, 2000, ch. 579, § 17; reenacted without change, Laws, 2002, ch. 500, § 18; reenacted and amended, Laws, 2004, ch. 364, § 18; reenacted and amended, Laws, 2007, ch. 581, § 19; Laws, 2009, ch. 544, § 17; reenacted and amended, Laws, 2010, ch. 462, § 20; reenacted without change, Laws, 2012, ch. 571, § 19, eff from and after July 1, 2012.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in (a)(ii), as amended by Laws, 2002, ch. 500. The words "Mississippi Mortgage Consumer Protection Act" were changed to "Mississippi Mortgage Consumer Protection Law." The Joint Committee ratified the correction at its May 16, 2002, meeting.

Editor's Note — For the repeal date of this section, see § 81-18-51.

Cross References — Applicability of this chapter to the activities of retail sellers of manufactured homes, see § 81-18-53.

Federal Aspects — Regulation Z of the Truth in Lending Act is codified at 12 CFR Part 226.

The Truth in Lending Act is codified at 15 USCS §§ 1601 et seq.

§ 81-18-35. Journal of mortgage transactions for Mississippi residential loans that licensee originates and/or funds; journal of serviced loans for Mississippi residential loans that licensee owns and/or services [Repealed effective July 1, 2016].

(1) Each licensee shall maintain a journal of mortgage transactions at the principal place of business as stated on its license, for all Mississippi residential loans that the licensee originated and/or funded. This journal shall be separate from non-Mississippi loans. The journal shall include at least the following information:

(a) Name of applicant and co-applicant, if applicable;

(b) Date of application; and

(c) Disposition of loan application, indicating date of loan closing, loan denial, withdrawal and name of lender if applicable.

(2) Each licensee shall maintain a journal of serviced loans at the principal place of business as stated on its license, for all Mississippi residential loans that the licensee owns and/or services. This journal shall be kept separate from non-Mississippi loans. The journal shall include at least the following information:

(a) The number of mortgage loans the licensee is servicing;

(b) The type and characteristics of the loans;

(c) The number of serviced loans in default, along with a breakdown of thirty-, sixty- and ninety-day delinquencies;

(d) Information on loss mitigation activities, including details on work-out arrangements undertaken; and

(e) Information on foreclosures commenced.

SOURCES: Laws, 2000, ch. 579, § 18; reenacted without change, Laws, 2002, ch. 500, § 19; reenacted without change, Laws, 2004, ch. 364, § 19; reenacted and amended, Laws, 2007, ch. 581, § 20; reenacted without change, Laws, 2010, ch. 462, § 21; reenacted and amended, Laws, 2012, ch. 571, § 20; Laws, 2013, ch. 499, § 8, eff from and after July 1, 2013.

Editor's Note — For the repeal date of this section, see § 81-18-51.

Cross References — Applicability of this chapter to the activities of retail sellers of manufactured homes, see § 81-18-53.

§ 81-18-36. Funds paid to licensee for payment of taxes or insurance premiums must be deposited in separate account from funds belonging to licensee; account to be designated "escrow account"; accounting for funds [Repealed effective July 1, 2016].

(1)(a) All monies paid to a licensee for payment of taxes, loan commitment deposits, work completion deposits, appraisals, credit reports or insurance premiums on property that secures any loan made or serviced by the licensee shall be deposited in an account that is insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration and shall be kept separate, distinct, and apart from funds belonging to the licensee.

(b) The funds, when deposited, are to be designated as an "escrow account," or under some other appropriate name, indicating that the funds are not the funds of the licensee.

(2) The licensee shall, upon reasonable notice, account to any debtor whose property secures a loan made by the licensee for any funds which that person has paid to the licensee for the payment of taxes or insurance premiums on the property in question.

(3) The licensee shall, upon reasonable notice, account to the commissioner for all funds in the company's escrow account.

(4) Escrow accounts are not subject to execution or attachment on any claim against the licensee.

(5) It is unlawful for any licensee knowingly to keep or cause to be kept any funds or money in any bank or other financial institution under the heading of "escrow account" or any other name designating the funds or monies belonging to the debtors of the licensee, except actual funds paid to the licensee for the payment of taxes and insurance premiums on property securing loans made or serviced by the company.

SOURCES: Laws, 2002, ch. 500, § 20; reenacted without change, Laws, 2004, ch. 364, § 20; reenacted and amended, Laws, 2007, ch. 581, § 21; reenacted without change, Laws, 2010, ch. 462, § 22; reenacted without change, Laws, 2012, ch. 571, § 21, eff from and after July 1, 2012.

Editor's Note — For the repeal date of this section, see § 81-18-51.

Cross References — Applicability of this chapter to the activities of retail sellers of manufactured homes, see § 81-18-53.

§ 81-18-37. Suspension or revocation of license; notice to licensee [Repealed effective July 1, 2016].

(1) The department may suspend or revoke any license for any reason that would have been grounds for refusal to issue an original license or for:

(a) A violation of any provision of this chapter or any rule or regulation adopted under this chapter;

(b) Failure of the licensee to pay, within thirty (30) days after it becomes final and nonappealable, a judgment recovered in any court within this state by a claimant or creditor in an action arising out of the licensee's business in this state as a mortgage broker or mortgage lender.

(2) Notice of the department's intention to enter an order denying an application for a license under this chapter or of an order suspending or revoking a license under this chapter shall be given to the applicant, licensee in writing, sent by registered or certified mail addressed to the principal place of business of the applicant or licensee. Within thirty (30) days of the date of the notice of intention to enter an order of denial, suspension or revocation under this chapter, the applicant, licensee may request in writing a hearing to contest the order. If a hearing is not requested in writing within thirty (30) days of the date of the notice of intention, the department shall enter a final order regarding the denial, suspension or revocation. Any final order of the department denying, suspending or revoking a license shall state the grounds upon which it is based and shall be effective on the date of issuance. A copy of the final order shall be forwarded promptly by registered or certified mail addressed to the principal place of business of the applicant or licensee.

SOURCES: Laws, 2000, ch. 579, § 19; reenacted without change, Laws, 2002, ch. 500, § 21; reenacted without change, Laws, 2004, ch. 364, § 21; reenacted and amended, Laws, 2007, ch. 581, § 22; Laws, 2009, ch. 544, § 18; reenacted without change, Laws, 2010, ch. 462, § 23; reenacted without change, Laws, 2012, ch. 571, § 22, eff from and after July 1, 2012.

Editor's Note — For the repeal date of this section, see § 81-18-51.

Cross References — Applicability of this chapter to the activities of retail sellers of manufactured homes, see § 81-18-53.

§ 81-18-39. Definition of "person"; violations of law; cease and desist orders; failure to comply with order; civil penalty [Repealed effective July 1, 2016].

(1) For purposes of this section, the term "person" shall be construed to include any officer, director, employee, affiliate or other person participating in the conduct of the affairs of the person subject to the orders issued under this section.

(2) If the department reasonably determines that a person required to be licensed under this chapter has violated any law of this state or any order or regulation of the department, the department may issue a written order requiring the person to cease and desist from unlawful or unauthorized practices. In the case of an unlawful purchase of mortgage loans, the cease and desist order to a purchaser shall constitute the knowledge required under this section for any subsequent violations.

(3) Any person required to be licensed under this chapter who has been deemed by the commissioner, after notice and hearing, to have violated the terms of any order properly issued by the department under this section shall be liable for a civil penalty not to exceed Three Thousand Dollars ($3,000.00). The department, in determining the amount of the penalty, shall take into account the appropriateness of the penalty relative to the size of the financial resources of the person, the good-faith efforts of the person to comply with the order, the gravity of the violation, the history of previous violations by the person, and other factors or circumstances that contributed to the violation. The department may compromise, modify or refund any penalty that has been imposed under this section. Any person assessed a penalty as provided in this subsection shall have the right to request a hearing on the amount of the penalty within ten (10) days after receiving notification of the assessment. If no hearing is requested within ten (10) days of the receipt of the notice, the penalty shall be final except as to judicial review in the Chancery Court of the First Judicial District of Hinds County. Upon the filing of a petition for judicial review, the court shall issue an order to the licensee requiring the licensee to show cause why it should not be entered. If the court determines, after a hearing upon the merits or after failure of the person to appear when so ordered, that the order of the department was properly issued, it shall grant the penalty sought by the department.

SOURCES: Laws, 2000, ch. 579, § 20; reenacted and amended, Laws, 2002, ch. 500, § 22; reenacted without change, Laws, 2004, ch. 364, § 22; reenacted without change, Laws, 2007, ch. 581, § 23; repealed by Laws, 2009, ch. 544, § 24; reenacted without change, Laws, 2010, ch. 462, § 24; reenacted and amended, Laws, 2012, ch. 571, § 23, eff from and after July 1, 2012.

Editor's Note — This section was repealed by Section 24 of Chapter 544, Laws of 2009, effective from and after July 31, 2009. It was subsequently reenacted by Section 24 of Chapter 462, Laws of 2010, which had the effect of resurrecting the section.

For the repeal date of this section, see § 81-18-51.

Cross References — Applicability of this chapter to the activities of retail sellers of manufactured homes, see § 81-18-53.

§ 81-18-40. Commissioner authorized to issue subpoenas; penalties for noncompliance with subpoena [Repealed effective July 1, 2016].

(1) For the purpose of conducting investigations, examinations or other proceedings under this chapter, the commissioner or his designee may issue subpoenas to any individual, person or other entity for the production of all books, papers, records, files, documents or other things, and may subpoena and compel the attendance of witnesses to give testimony, and may administer oaths. Subpoenas as herein provided may be served either by personal process or by registered mail, and upon service shall command attendance of such witnesses, and/or production of such papers and documents, at the time and place so specified.

(2) Any person or entity who fails or refuses to comply with a subpoena issued hereunder may be assessed by the commissioner a civil penalty of not more than Five Hundred Dollars ($500.00) for each day of noncompliance, and any privileges or licenses issued by the commissioner to the person or entity may be suspended for not more than six (6) months. In addition to the civil penalty, the commissioner shall be entitled to the assistance of the chancery court or the chancellor in vacation, which, on petition by the commissioner or his designee, shall issue ancillary subpoenas and petitions and may punish as for contempt of court in the event of noncompliance therewith, and assess attorney's fees and costs, if deemed appropriate.

SOURCES: Laws, 2008, ch. 434, § 9; reenacted without change, Laws, 2010, ch. 462, § 25; reenacted without change, Laws, 2012, ch. 571, § 24, eff from and after July 1, 2012.

Editor's Note — For repeal of this section, see § 81-18-51.

Cross References — Applicability of this chapter to the activities of retail sellers of manufactured homes, see § 81-18-53.

§ 81-18-41. Continuation of loan servicing under existing servicing contracts by suspended licensee [Repealed effective July 1, 2016].

Nothing in this chapter shall preclude a person whose license has been suspended or revoked from continuing to service mortgage loans pursuant to servicing contracts in existence at the time of the suspension or revocation for a reasonable transition period, as determined by the commissioner, after the date of the entry of the final decision in the case suspending or revoking the license.

SOURCES: Laws, 2000, ch. 579, § 21, eff from and after July 1, 2000; reenacted without change, Laws, 2002, ch. 500, § 23; reenacted without change, Laws, 2004, ch. 364, § 23; reenacted and amended, Laws, 2007, ch. 581, § 24; reenacted without change, Laws, 2010, ch. 462, § 26; reenacted without change, Laws, 2012, ch. 571, § 25, eff from and after July 1, 2012.

Editor's Note — For the repeal date of this section, see § 81-18-51.

Cross References — Applicability of this chapter to the activities of retail sellers of manufactured homes, see § 81-18-53.

§ 81-18-43. Penalties for violations; report of violations; hearing on amount of penalty; judicial review [Repealed effective July 1, 2016].

(1) In order to ensure the effective supervision and enforcement of this chapter, the commissioner may:

(a) Deny, suspend, revoke, condition or decline to renew a license for a violation of this chapter, rules or regulations issued under this chapter or order or directive entered under this chapter.

(b) Deny, suspend, revoke, condition or decline to renew a license if an applicant or licensee fails at any time to meet the requirements of Section 81-18-9(4) or 81-18-15(2), or withholds information or makes a material misstatement in an application for a license or renewal of a license.

(c) Order restitution against persons subject to this chapter for violations of this chapter.

(d) Impose civil penalties on persons subject to this chapter under subsections (2) and (3) of this section.

(e) Issue orders or directives under this chapter as follows:

(i) Order or direct persons subject to this chapter to cease and desist from conducting business, including immediate temporary orders to cease and desist.

(ii) Order or direct persons subject to this chapter to cease any harmful activities or violations of this chapter, including immediate temporary orders to cease and desist.

(iii) Enter immediate temporary orders to cease business under a license issued under the authority granted under Section 81-18-7(6) if the commissioner determines that the license was erroneously granted or the licensee is currently in violation of this chapter.

(iv) Order or direct such other affirmative action as the commissioner deems necessary.

(2) The commissioner may impose a civil penalty on a mortgage loan originator or person subject to this chapter, if the commissioner finds, on the record after notice and opportunity for hearing, that the mortgage loan originator or person subject to this chapter has violated or failed to comply with any requirement of this chapter or any regulation prescribed by the commissioner under this chapter or order issued under authority of this chapter. The maximum amount of penalty for each act or omission described in this subsection shall be Twenty-five Thousand Dollars ($25,000.00).

(3) Each violation or failure to comply with any directive or order of the commissioner is a separate and distinct violation or failure.

(4) For a first offense, the licensee, person required to be licensed, or employee may be found guilty of a misdemeanor and, upon conviction thereof, shall be punishable by imprisonment in the county jail for not more than one (1) year.

(5) For a second or subsequent offense, the licensee, person required to be licensed, or employee shall be guilty of a felony and, upon conviction thereof, may be punished by imprisonment in the custody of the State Department of Corrections for a term not less than one (1) year nor more than five (5) years.

(6) Compliance with the criminal provisions of this section shall be enforced by the appropriate law enforcement agency, which may exercise for that purpose any authority conferred upon the agency by law.

(7) The commissioner shall report regularly violations of this chapter, as well as enforcement actions and other relevant information, to the Nationwide Mortgage Licensing System and Registry subject to the provisions contained in Section 81-18-63.

(8) The state may enforce its rights under the surety bond as required in Section 81-18-11 as an available remedy for the collection of any civil penalties, criminal fines or costs of investigation and/or prosecution incurred.

(9) Any person assessed a penalty as provided in this section shall have the right to request a hearing on the amount of the penalty within ten (10) days after receiving notification of the assessment. If no hearing is requested within ten (10) days of the receipt of the notice, the penalty shall be final except as to judicial review in the Chancery Court of the First Judicial District of Hinds County. Upon the filing of a petition for judicial review, the court shall issue an order to the licensee requiring the licensee to show cause why it should not be entered. If the court determines, after a hearing upon the merits or after failure of the person to appear when so ordered, that the order of the department was properly issued, it shall grant the penalty sought by the department.

SOURCES: Laws, 2000, ch. 579, § 22; reenacted without change, Laws, 2002, ch. 500, § 24; reenacted and amended, Laws, 2004, ch. 364, § 24; reenacted and amended, Laws, 2007, ch. 581, § 25; Laws, 2009, ch. 544, § 19; reenacted without change, Laws, 2010, ch. 462, § 27; reenacted without change, Laws, 2012, ch. 571, § 26, eff from and after July 1, 2012.

Editor's Note — For the repeal date of this section, see § 81-18-51.

Cross References — Applicability of this chapter to the activities of retail sellers of manufactured homes, see § 81-18-53.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor or felony violation, see § 99-19-73.

§ 81-18-45. Commissioner authorized to hire additional full-time employees [Repealed effective July 1, 2016].

The commissioner may employ the necessary full-time employees above the number of permanent full-time employees authorized for the department for the fiscal year 2001, to carry out and enforce the provisions of this chapter. The commissioner also may expend the necessary funds and equip and provide necessary travel expenses for those employees.

SOURCES: Laws, 2000, ch. 579, § 23; reenacted without change, Laws, 2002, ch. 500, § 25; reenacted without change, Laws, 2004, ch. 364, § 25; reenacted without change, Laws, 2007, ch. 581, § 26; reenacted without change, Laws, 2010, ch. 462 eff from and after July 1, 2010.

Editor's Note — For the repeal date of this section, see § 81-18-51.

Cross References — Applicability of this chapter to the activities of retail sellers of manufactured homes, see § 81-18-53.

§ 81-18-47. Immunity from liability [Repealed effective July 1, 2016].

(1) A licensee under this chapter shall have no liability for any act or practice done or omitted in conformity with (a) any rule or regulation of the commissioner, or (b) any rule, regulation, interpretation or approval of any other state or federal agency or any opinion of the Attorney General, notwithstanding that after such act or omission has occurred the rule, regulation, interpretation, approval or opinion is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

(2) A licensee under this chapter, acting in conformity with a written interpretation or approval by an official or employee of any state or federal agency or department, shall be presumed to have acted in accordance with applicable law, notwithstanding that after such act has occurred, the interpretation or approval is amended, rescinded, or determined by judicial or other authority to be incorrect or invalid for any reason.

SOURCES: Laws, 2000, ch. 579, § 24; reenacted without change, Laws, 2002, ch. 500, § 26; reenacted without change, Laws, 2004, ch. 364, § 26; reenacted without change, Laws, 2007, ch. 581, § 27; reenacted without change, Laws, 2010, ch. 462, eff from and after July 1, 2010.

Editor's Note — For the repeal date of this section, see § 81-18-51.

Cross References — Applicability of this chapter to the activities of retail sellers of manufactured homes, see § 81-18-53.

§ 81-18-49. Grandfather provisions [Repealed effective July 1, 2016].

Notwithstanding any provisions of this chapter to the contrary, mortgage companies engaging in business on or before June 1, 2000, shall be duly licensed by the department after submitting not later than January 1, 2001, the required documents and fees provided in Sections 81-18-9 and 81-18-15. However, upon the expiration of the initial licenses for such mortgage companies, the department shall renew the licenses only if the mortgage companies satisfy all of the provisions of this chapter.

SOURCES: Laws, 2000, ch. 579, § 25; reenacted without change, Laws, 2002, ch. 500, § 27; reenacted without change, Laws, 2004, ch. 364, § 27; reenacted without change, Laws, 2007, ch. 581, § 28; reenacted without change, Laws, 2010, ch. 462; eff from and after July 1, 2010.

Editor's Note — For the repeal date of this section, see § 81-18-51.

Cross References — Applicability of this chapter to the activities of retail sellers of manufactured homes, see § 81-18-53.

§ 81-18-51. Repeal of §§ 81-18-1 through 81-18-63 [Repealed effective July 1, 2016].

Sections 81-18-1 through 81-18-63 shall stand repealed on July 1, 2016.

SOURCES: Laws, 2000, ch. 579, § 27; Laws, 2002, ch. 500, § 28; Laws, 2004, ch. 364, § 28; Laws, 2007, ch. 581, § 29; Laws, 2009, ch. 544, § 20; reenacted and amended, Laws, 2010, ch. 462, § 31; Laws, 2012, ch. 571, § 27, eff from and after July 1, 2012.

Cross References — Applicability of this chapter to the activities of retail sellers of manufactured homes, see § 81-18-53.

§ 81-18-53. Applicability of chapter [Repealed effective July 1, 2016].

The provisions of this chapter shall apply to the activities of retail sellers of manufactured homes to the extent as determined by the United States Department of Housing and Urban Development through guidelines, rules, regulations or interpretive letters or the United States Consumer Financial Protection Bureau.

SOURCES: Laws, 2009, ch. 544, § 23; reenacted without change, Laws, 2010, ch. 462, § 28; Laws, 2011, ch. 386, § 1; reenacted and amended, Laws, 2012, ch. 571, § 28, eff from and after July 1, 2012.

Federal Aspects — Housing and Economic Recovery Act of 2008, Public Law 110-289.

§ 81-18-55. Activities prohibited in the course of residential mortgage loan transactions; compliance with borrower's request for information; compliance with certain requirements whether residential mortgage loan is in default or borrower is in bankruptcy [Repealed effective July 1, 2016].

(1) In addition to the activities prohibited under other provisions of this chapter, it shall be unlawful in the course of any residential mortgage loan transaction:

(a) For any person to fail to comply with the mortgage loan servicing transfer, escrow account administration, or borrower inquiry response requirements imposed by Sections 6 and 10 of the Real Estate Settlement Procedures Act (RESPA) and regulations adopted thereunder;

(b) For a mortgage lender to fail to provide written notice to a borrower upon taking action to place hazard, homeowners, or flood insurance on the mortgaged property or to place such insurance when the mortgage lender knows or has reason to know that the insurance is in effect;

(c) For a mortgage lender to place hazard, homeowners or flood insurance on a mortgaged property for an amount that exceeds either the value of the insurable improvements or the last-known coverage amount of insurance;

(d) For a mortgage lender to fail to provide to the borrower a refund or earned premiums paid by a borrower or charged to the borrower for hazard, homeowners, or flood insurance placed by a mortgage lender if the borrower provides reasonable proof that the borrower has obtained coverage such that the forced placement is no longer necessary and the property is insured. If the borrower provides reasonable proof within twelve (12) months of the placement that no lapse in coverage occurred such that the forced placement was not necessary, the mortgage lender shall refund the entire premium;

(e) For a mortgage lender to refuse to reinstate a delinquent loan upon a tender of payment made timely under the contract which is sufficient in amount, based upon the last written statement received by the borrower, to pay all past-due amounts, outstanding or overdue charges, and restore the loan to a nondelinquent status, but his reinstatement shall be available to a borrower no more than twice in any twenty-four-month period;

(f) For a mortgage lender to fail to mail, at least forty-five (45) days before foreclosure is initiated, a notice addressed to the borrower at the borrower's last-known address with the following information:

(i) An itemization of all past-due amounts causing the loan to be in default;

(ii) An itemization of any other charges that must be paid in order to bring the loan current;

(iii) A statement that the borrower may have options available other than foreclosure and that the borrower may discuss the options with the mortgage lender, or a counselor approved by the U.S. Department of Housing and Urban Development (HUD);

(iv) The address, telephone number, and other contact information for the mortgage lender or the agent for the mortgage lender who is authorized to attempt to work with the borrower to avoid foreclosure;

(v) The name, address, telephone number, and other contact information for one or more HUD-approved counseling agencies operating to assist borrowers in Mississippi to avoid foreclosure; and

(vi) The address, telephone number, and other contact information for the consumer complaint section of the Mississippi Department of Banking and Consumer Finance;

(g) For a mortgage lender to fail to make all payments from any escrow account held for the borrower for insurance, taxes and other charges with respect to the property in a timely manner so as to ensure that no late penalties are assessed or other negative consequences result regardless of whether the loan is delinquent, unless there are not sufficient funds in the account to cover the payments and the mortgage lender has a reasonable basis to believe that recovery of the funds will not be possible.

(2) The mortgage lender shall make reasonable attempts to comply with a borrower's request for information about the home loan account and to respond to any dispute initiated by the borrower about the loan account, as provided in this section. The mortgage lender shall maintain, until the home loan is paid in full, otherwise satisfied, or sold, written or electronic records of each written request for information regarding a dispute or error involving the borrower's account. Specifically, the mortgage lender is required to do all of the following:

(a) Provide a written statement to the borrower within ten (10) business days of receipt of a written request from the borrower that includes or otherwise enables the mortgage lender to identify the name and account of the borrower and includes a statement that the account is or may be in error or otherwise provides sufficient detail to the mortgage lender regarding information sought by the borrower. The borrower is entitled to one such statement in any six-month period free of charge, and additional statements shall be provided if the borrower pays the mortgage lender a reasonable charge for preparing and furnishing the statement not to exceed Twenty-five Dollars ($25.00). The statement shall include the following information if requested:

(i) Whether the account is current or, if the account is not current, an explanation of the default and the date the account went into default;

(ii) The current balance due on the loan, including the principal due, the amount of funds (if any) held in a suspense account, the amount of the escrow balance (if any) known to the mortgage lender, and whether there are any escrow deficiencies or shortages known to the mortgage lender;

(iii) The identity, address and other relevant information about the current holder, owner or assignee of the loan; and

(iv) The telephone number and mailing address of a mortgage lender representative with the information and authority to answer questions and resolve disputes;

(b) Provide the following information and/or documents within twenty-five (25) business days of receipt of a written request from the borrower that includes or otherwise enables the mortgage lender to identify the name and account of the borrower and includes a statement that the account is or may be in error or otherwise provides sufficient detail to the mortgage lender regarding information sought by the borrower:

(i) A copy of the original note, or if unavailable, an affidavit of the lost note;

(ii) A statement that identifies and itemizes all fees and charges assessed under the loan transaction and provides a full payment history identifying in a clear and conspicuous manner all of the debits, credits, application of and disbursement of all payments received from or for the benefit of the borrower, and other activity on the home loan including escrow account activity and suspense account activity, if any. The period of the account history shall cover at a minimum the two-year period prior to the date of the receipt of the request for information. If the mortgage lender has not serviced the home loan for the entire two-year time period the mortgage lender shall provide the information going back to the date on which the mortgage lender began servicing the home loan. For purposes of this subsection, the date of the request for the information shall be presumed to be no later than thirty (30) days from the date of the receipt of the request. If the mortgage lender claims that any delinquent or outstanding sums are owed on the home loan prior to the two-year period or the period during which the mortgage lender has serviced the loan, the mortgage lender shall provide an account history beginning with the month that the mortgage lender claims any outstanding sums are owed on the loan up to the date of the request for the information. The borrower is entitled to one (1) such statement in any six-month period free of charge. Additional statements shall be provided if the borrower pays the mortgage lender a reasonable charge for preparing and furnishing the statement not to exceed Fifty Dollars ($50.00); and

(c) Promptly correct errors relating to the allocation of payments, the statement of account, or the payoff balance identified in any notice from the borrower provided in accordance with paragraph (b) of this subsection, or discovered through the due diligence of the mortgage lender or other means.

(3) A mortgage lender must comply as to every residential mortgage loan, regardless of whether the loan is considered in default or the borrower is in bankruptcy or the borrower has been in bankruptcy, with the following requirements:

(a) Any fee that is incurred by a mortgage lender shall be both:

(i) Assessed within forty-five (45) days of the date on which the fee was incurred. Provided, however, that attorney or trustee fees and costs incurred as a result of a foreclosure action shall be assessed within forty-five (45) days of the date they are charged by either the attorney or trustee to the mortgage lender; and

(ii) Explained clearly and conspicuously in a statement mailed to the borrower at the borrower's last-known address within thirty (30) days after assessing the fee, provided the mortgage lender shall not be required to take any action in violation of the provisions of the federal bankruptcy code. The mortgage lender shall not be required to send such a statement for a fee that: results from a service that is affirmatively requested by the borrower, is paid for by the borrower at the time the service is provided, and is not charged to the borrower's loan account.

(b) All amounts received by a mortgage lender on a home loan at the address where the borrower has been instructed to make payments shall be accepted and credited, or treated as credited, within one (1) business day of the date received, provided that the borrower has made the full contractual payment and has provided sufficient information to credit the account. If a mortgage lender uses the scheduled method of accounting, any regularly scheduled payment made prior to the scheduled due date shall be credited no later than the due date. Provided, however, that if any payment is received and not credited, or treated as credited, the borrower shall be notified within ten (10) business days by mail at the borrower's last-known address of the disposition of the payment, the reason the payment was not credited, or treated as credited to the account, and any actions necessary by the borrower to make the loan current.

(c) The notification required by paragraph (b) of this subsection is not necessary if the mortgage lender complies with the terms of any agreement or plan made with the borrower and has applied and credited payments received in the manner required, and the mortgage lender is applying and crediting payments to the borrower's account in compliance with all applicable state and federal laws, including bankruptcy laws, and if at least one (1) of the following occurs:

(i) The borrower has entered into written loss mitigation, loan modification, or forebearance agreement with the mortgage lender that itemizes all amounts due and specifies how payments will be applied and credited;

(ii) The borrower has elected to participate in an alternative payment plan, such as a biweekly payment plan, that specifies as part of a written agreement how payments will be applied and credited; or

(iii) The borrower is making payments pursuant to a bankruptcy plan.

(d) Failure to charge the fee or provide the information within the allowable time and in the manner required under subsection (3)(a)(i) of this section constitutes a waiver of such fee.

(e) All fees charged by a mortgage lender must be otherwise permitted under applicable law and the contracts between the parties. Nothing herein is intended to permit the application of payments or method of charging interest which is less protective of the borrower than the contracts between the parties and other applicable law.

(f) A mortgage lender shall charge a sum or prepayment penalty for the prepayment of any residential mortgage loan only as authorized by Section 75-17-31.

(g) A mortgage lender shall charge a late payment charge only as authorized by Section 75-17-27.

(h) The costs of collection and reasonable attorney fees may not be in excess of twenty-five percent (25%) of the unpaid debt after default, when the debt has been referred to an attorney for collection.

(i) Charges or premiums for credit life insurance actually written on the life of the borrower or endorser in an amount not to exceed the total sum payable under the residential mortgage loan, including all interest, fees, costs and charges.

SOURCES: Laws, 2012, ch. 571, § 31, eff from and after July 1, 2012.

Editor's Note — For repeal of this section, see § 81-18-51.

Cross References — Applicability of this chapter to the activities of retail sellers of manufactured homes, see § 81-18-53.

Federal Aspects — Real Estate Settlement Procedures Act generally, see 12 U.S.C.S. § 2601 et seq.

NATIONWIDE LICENSING SYSTEM

SEC.

81-18-61. Mortgage loan originators required to be licensed and registered through Nationwide Mortgage Licensing System and Registry; background checks; fees; process to challenge information in system; independent contractor loan processor or underwriter to be licensed as mortgage loan originator [Repealed effective July 1, 2016].

81-18-63. Confidentiality of information or material provided to Nationwide Mortgage Licensing System and Registry [Repealed effective July 1, 2016].

§ 81-18-61. Mortgage loan originators required to be licensed and registered through Nationwide Mortgage Licensing System and Registry; background checks; fees; process to challenge information in system; independent contractor loan processor or underwriter to be licensed as mortgage loan originator [Repealed effective July 1, 2016].

(1) In addition to any other duties imposed upon the commissioner by law, the commissioner shall require mortgage loan originators to be licensed and registered through the Nationwide Mortgage Licensing System and Registry. In order to carry out this requirement, the commissioner is authorized to participate in the Nationwide Mortgage Licensing System and Registry. For this purpose, the commissioner may establish, by rule, regulation or order, requirements as necessary, including, but not limited to:

(a) Background checks for:

(i) Criminal history through fingerprint or other databases;

(ii) Civil or administrative records;

(iii) Credit history; or

(iv) Any other information as deemed necessary by the Nationwide Mortgage Licensing System and Registry;

(b) The payment of fees to apply for or renew licenses through the Nationwide Mortgage Licensing System and Registry;

(c) The setting or resetting as necessary of renewal or reporting dates; and

(d) Requirements for amending or surrendering a license or any other such activities as the commissioner deems necessary for participation in the Nationwide Mortgage Licensing System and Registry.

(2) The commissioner shall establish a process by which mortgage loan originators may challenge information entered into the Nationwide Mortgage Licensing System and Registry by the commissioner.

(3) In order to fulfill the purposes of this chapter, the commissioner is authorized to establish relationships or contracts with the Nationwide Mortgage Licensing System and Registry or other entities designated by the Nationwide Mortgage Licensing System and Registry to collect and maintain records and process transaction fees or other fees related to licensees or other persons subject to this chapter.

(4) A loan processor or underwriter who is an independent contractor may not engage in the activities of a loan processor or underwriter unless the independent contractor loan processor or underwriter obtains and maintains a license under Section 81-18-7(4). Each independent contractor loan processor or underwriter licensed as a mortgage loan originator must have and maintain a valid unique identifier issued by the Nationwide Mortgage Licensing System and Registry.

SOURCES: Laws, 2007, ch. 581, § 30; Laws, 2008, ch. 434, § 8; Laws, 2009, ch. 544, § 21; reenacted without change, Laws, 2010, ch. 462, § 29; reenacted without change, Laws, 2012, ch. 571, § 29, eff from and after July 1, 2012.

Editor's Note — For the repeal date of this section, see § 81-18-51.

Cross References — Applicability of this chapter to the activities of retail sellers of manufactured homes, see § 81-18-53.

§ 81-18-63. Confidentiality of information or material provided to Nationwide Mortgage Licensing System and Registry [Repealed effective July 1, 2016].

(1) Except as otherwise provided in Public Law 110-289, Section 1512, the requirements under any federal law or applicable state law regarding the privacy or confidentiality of any information or material provided to the Nationwide Mortgage Licensing System and Registry, and any privilege arising under federal or state law (including the rules of any federal or state court) with respect to that information or material, shall continue to apply to the information or material after the information or material has been disclosed to the Nationwide Mortgage Licensing System and Registry. The information and material may be shared with all state and federal regulatory officials with mortgage industry oversight authority without the loss of

privilege or the loss of confidentiality protections provided by federal law or applicable state law.

(2) In order to promote more effective regulation and reduce regulatory burden through supervisory information sharing, the commissioner is authorized to enter agreements or sharing arrangements with other governmental agencies, the Conference of State Bank Supervisors, the American Association of Residential Mortgage Regulators or other associations representing governmental agencies as established by rule, regulation or order of the commissioner.

(3) Information or material that is subject to a privilege or confidentiality under subsection (1) of this section shall not be subject to:

(a) Disclosure under any federal or state law governing the disclosure to the public of information held by an officer or an agency of the federal government or the respective state; or

(b) Subpoena or discovery, or admission into evidence, in any private civil action or administrative process, unless with respect to any privilege held by the Nationwide Mortgage Licensing System and Registry with respect to that information or material, the person to whom the information or material pertains waives, in whole or in part, in the discretion of the person, that privilege.

(4) Any applicable state law relating to the disclosure of confidential supervisory information or any information or material described in subsection (1) of this section that is inconsistent with subsection (1) shall be superseded by the requirements of this section.

(5) This section shall not apply with respect to the information or material relating to the employment history of, and publicly adjudicated disciplinary and enforcement actions against, mortgage loan originators that is included in the Nationwide Mortgage Licensing System and Registry for access by the public.

SOURCES: Laws, 2009, ch. 544, § 22; reenacted without change, Laws, 2010, ch. 462, § 30; reenacted without change, Laws, 2012, ch. 571, § 30, eff from and after July 1, 2012.

Editor's Note — For the repeal date of this section, see § 81-18-51.

Cross References — Applicability of this chapter to the activities of retail sellers of manufactured homes, see § 81-18-53.

Federal Aspects — Housing and Economic Recovery Act of 2008, Public Law 110-289.

CHAPTER 19

Consumer Loan Broker Act

Sec.
81-19-1. Short title.
81-19-3. Definitions.
81-19-5. License requirement; penalty for violation.
81-19-7. Exclusions from chapter coverage.
81-19-9. License application; fee; surety requirement.
81-19-11. Investigation of applicant; issuance or denial of license; time limit for acting on applications.
81-19-13. Separate licenses required for each location; movement of licensed location; surrender of license.
81-19-15. Renewal of license; penalty for failure to pay fee.
81-19-17. Supervision of licensees by commissioner; regulations; examination of licensees' records, etc.; administrative fines; injunctions against licensees violating chapter; administrative fine.
81-19-18. Commissioner authorized to examine persons suspected of conducting business requiring a license.
81-19-19. Deposit of funds collected into Consumer Finance Fund.
81-19-21. Contracts to be written; enumeration of charges.
81-19-23. Activities prohibited; violation; penalties; borrower's remedies.
81-19-25. Records of licensee; retention.
81-19-27. Separate account required for charges and fees collected by broker; authorization to withdraw from account.
81-19-29. Suspension or revocation of license; grounds; commissioner may to enter orders to require persons to refrain from violations.
81-19-31. Service charge not to be construed as finance charge or interest.
81-19-33. Effect of failure to comply with chapter on underlying transaction.
81-19-35. Right to hearing upon denial or revocation of license; notice; appeal; review.

§ 81-19-1. Short title.

This chapter shall be known and may be cited as the "Consumer Loan Broker Act."

SOURCES: Laws, 1992, ch. 485, § 1, eff from and after July 1, 1992.

JUDICIAL DECISIONS

1. Preemption by National Bank Act.

Plaintiff consumers' state claims under the Mississippi Consumer Loan Broker Act, Miss. Code Ann. § 81-19-1 et seq., and Mississippi Mortgage Consumer Protection Act, Miss. Code Ann. § 81-18-1 et seq., relating to defendant national bank's real estate lending powers granted by the National Bank Act, were preempted by that Act and by 12 C.F.R. § 34.3(a), (b). Austin v. Provident Bank, — F. Supp. 2d —, 2005 U.S. Dist. LEXIS 37113 (N.D. Miss. July 26, 2005).

§ 81-19-3. Definitions.

As used in this chapter:

(a) "Advance fee" means any consideration which is assessed or collected prior to the closing of a loan.

(b) "Commissioner" means the Commissioner of Banking and Consumer Finance.

(c) "Consumer loan" means a transaction by which a lender extends credit for personal, family or household purposes in the form of payment of money or of agreement to pay money, for the account of, or to a third party on behalf of, a natural person or persons and which is repayable in installments and may be unsecured or secured by real or personal property. The term "consumer loan" also includes the creation of consumer debt by a credit to an account with a lender upon which the borrower is entitled to draw immediately.

(d) "Consumer loan broker" means a person not otherwise exempt from this chapter who, for compensation from borrowers, finds and obtains consumer loans or credit cards for borrowers from third party lenders.

(e) "Department" means the Department of Banking and Consumer Finance.

(f) "Lender" means a person who makes consumer loans.

(g) "License" means a license required by this chapter.

(h) "Loan charges and fees" means amounts collected from a borrower by a consumer loan broker on behalf of a lender to defray costs of such items as appraisals, surveys, title opinions and similar other expenses.

(i) "Service charge" means the amount charged a borrower by a consumer loan broker for the service of finding and obtaining a consumer loan for the borrower from a third party lender.

(j) "Records" or "documents" means any item in hard copy or produced in a format of storage commonly described as electronic, imaged, magnetic, microphotographic or otherwise, and any reproduction so made shall have the same force and effect as the original thereof and be admitted in evidence equally with the original.

SOURCES: Laws, 1992, ch. 485, § 2; Laws, 2000, ch. 621, § 30, eff from and after passage (approved May 23, 2000.)

§ 81-19-5. License requirement; penalty for violation.

No person shall engage in the business of being a consumer loan broker before posting the bond and obtaining the license as required by this chapter. Any person violating this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than One Thousand Dollars ($1,000.00) or by imprisonment in the county jail for not more than six (6) months, or by both such fine and imprisonment.

SOURCES: Laws, 1992, ch. 485, § 3, eff from and after July 1, 1992.

RESEARCH REFERENCES

Am Jur. 53A Am. Jur. 2d, Moneylenders and Pawnbrokers §§ 16, 17.

§ 81-19-7. Exclusions from chapter coverage.

Except as otherwise provided in this section, this chapter does not apply to:

(a) Banks, bank holding companies, credit unions, insurance companies, savings and loan associations, savings banks, savings and loan association holding companies, small loan licensees, pawnbrokers, trust companies and their employees when acting on behalf of the employer.

(b) Approved mortgagees of the United States Department of Housing and Urban Development, the Federal Housing Administration or other federal agency.

(c) Mortgage companies required to be licensed and individuals required to be registered under the Mississippi Mortgage Consumer Protection Act (Sections 81-18-1 through 81-18-47), and persons exempt from licensing and registration as provided in Section 81-18-5.

(d) An attorney or certified public accountant licensed in this state, or an enrolled agent who has a current certification from the Internal Revenue Service, who is not actively and principally engaged in the business of being a consumer loan broker even though the services of a consumer loan broker are occasionally rendered in the attorney's practice of law, the certified public accountant's practice of accounting or the enrolled agent's practice of tax services or bookkeeping. However, any such attorney, certified public accountant or enrolled agent still shall be subject to the provisions of this chapter except for the provisions of Section 81-19-5.

(e) A person who, without the consent of the owner, receives a mortgage or deed of trust on real or personal property as security for an obligation arising from use of materials or services in the improvement or repair of the property.

(f) A seller of real property who receives one or more mortgages or deeds of trust as security for a purchase money obligation.

SOURCES: Laws, 1992, ch. 485, § 4; Laws, 1994, ch. 320 § 6; Laws, 1997, ch. 332, § 5; Laws, 2000, ch. 579, § 26; Laws, 2004, ch. 370, § 1; Laws, 2005, ch. 327, § 1, eff from and after July 1, 2005.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in (c). "Sections 81-18-1 through 81-18-47" was substituted for "Sections 1 through 24 of this act" following "Mississippi Mortgage Consumer Protection Act."

Editor's Note — The title of Chapter 18 of Title 81, referenced above, was originally "Mississippi Mortgage Consumer Protection Law," but was first amended to be "Mississippi S.A.F.E. Mortgage Licensing Act of 2009" by Section 1 of Chapter 544, Laws of 2009, and then amended to be "Mississippi S.A.F.E. Mortgage Act" by Section 1 of Chapter 462, Laws of 2010.

§ 81-19-9. License application; fee; surety requirement.

(1) An application to become licensed as a consumer loan broker shall be in writing, under oath and in a form prescribed by the commissioner, and shall contain:

(a) The full name and address of the applicant;

(b) The street address, municipality and county of the proposed licensed location;

(c) The complete business and residence address of:

(i) The proprietor, if an individual applicant;

(ii) All partners, if a partnership applicant; or

(iii) The directors and chief executive officer, if a corporate applicant; and

(d) Such other information as the commissioner may reasonably require in order to evaluate the applicant's suitability to operate as a consumer loan broker.

(2) Each application shall be accompanied by the payment of Three Hundred Dollars ($300.00), which shall be the annual license fee for each licensed location of a consumer loan broker and is in addition to all other taxes and fees required by law. The twelve-month licensing period shall begin on the date the license is issued.

(3) Each application shall be accompanied by evidence of a surety bond in an amount of Twenty-five Thousand Dollars ($25,000.00) issued by a company authorized to do business in Mississippi and approved by the commissioner. The bond shall be in favor of the State of Mississippi to discharge unsatisfied indebtedness or liability of the licensed consumer loan broker to the state, any political subdivision thereof or to any person who may have a cause of action against the broker by reason of the broker's conduct as a licensed consumer loan broker.

The surety on the bond may cancel same by giving sixty (60) days' notice in writing to the commissioner and thereafter shall be relieved of liability after the effective date of cancellation. The commissioner shall require a new bond in an amount of Twenty-five Thousand Dollars ($25,000.00) at any time he has knowledge that a licensee's bond has expired, is about to expire or, in the opinion of the commissioner, is insecure for any reason. The license of any consumer loan broker who fails to post a replacement bond within ten (10) days from receipt of a notice from the commissioner shall be cancelled immediately.

Claimants against the licensee may bring suit directly on the bond, and the Attorney General also may bring suit on behalf of claimants in one (1) or multiple actions.

SOURCES: Laws, 1992, ch. 485, § 5, eff from and after July 1, 1992.

§ 81-19-11. Investigation of applicant; issuance or denial of license; time limit for acting on applications.

The commissioner shall investigate the financial soundness, experience, character, reputation and general fitness of the applicant to determine if the business will be operated honestly and in compliance with this chapter and the regulations of the department and if the applicant merits the confidence of the community in which the license is to be located.

At the determination of the commissioner, a license may be issued to the applicant to operate as a consumer loan broker at the address stated in the application.

The commissioner may deny the application and, in that event, shall return the applicant's bond as well as one-half (½) of the annual fee. The commissioner shall retain the remaining one-half (½) and treat it as other collections permitted under this chapter.

The commissioner shall officially act on all applications within thirty (30) days of receipt of same by the department.

SOURCES: Laws, 1992, ch. 485, § 6, eff from and after July 1, 1992.

Cross References — Right to hearing upon denial or revocation of license, see § 81-19-35.

§ 81-19-13. Separate licenses required for each location; movement of licensed location; surrender of license.

No more than one (1) place of business may be operated under one (1) license; however, a licensed entity may operate multiple locations, each separately licensed.

The license shall be in such form as the commissioner may prescribe and shall be conspicuously posted in the licensed location.

A licensee may move the licensed location within the same county after securing the permission of the commissioner and the payment of Twenty-five Dollars ($25.00) to the department. Upon approval of the new address, the commissioner shall issue an amended license for the unexpired portion of the year. Nothing in this paragraph shall authorize or permit any change of a licensed address to any location outside the original county of licensure.

A licensee may surrender his license by returning it to the commissioner; however, neither the licensee nor the surety on his bond are relieved of any liability which may have accrued before the surrender date.

SOURCES: Laws, 1992, ch. 485, § 7, eff from and after July 1, 1992.

§ 81-19-15. Renewal of license; penalty for failure to pay fee.

Applications for renewal of a license shall be submitted, along with the payment of the annual fee, on an application form supplied by the commissioner upon which information relating to all of the applicant's licensed offices shall be set forth in accordance with instructions contained therein, including, in the discretion of the commissioner, such additional information as may be required by statute or regulation for the issuance of an initial license.

The application for renewal of a license shall be received by the commissioner within thirty (30) days prior to the expiration of any valid and existing license issued hereunder. If any person engages in business as provided for in this chapter without paying the license fee provided for in this chapter before commencing business or before the expiration of his current license shall be liable for the full amount of the license fee, plus a penalty in an amount not to exceed Twenty-five Dollars ($25.00) for each day that the person has engaged in the business without a license or after the expiration of a license.

SOURCES: Laws, 1992, ch. 485, § 8; Laws, 2000, ch. 621, § 31, eff from and after passage (approved May 23, 2000.)

§ 81-19-17. Supervision of licensees by commissioner; regulations; examination of licensees' records, etc.; administrative fines; injunctions against licensees violating chapter; administrative fine.

(1) Each licensee shall be subject to the supervision of the commissioner.

(2) The commissioner is authorized to make and enforce such reasonable regulations as are necessary and proper for the administration, enforcement and interpretation of the provisions of this chapter. In adopting such regulations, the commissioner shall follow the procedures set forth in the Mississippi Administrative Procedures Act (Sections 25-43-1 et seq., Mississippi Code of 1972).

(3) In order to discover violations of this chapter and to identify persons subject to the provisions of this chapter, the commissioner is authorized to examine licensees, including all books, records, accounts and papers employed by such licensees in the transaction of their business, to summon witnesses and examine them under oath concerning matters relating to the business of such persons, and to investigate such other matters as may be relevant in the opinion of the commissioner. For this purpose and for the general purposes of administration of this chapter, the commissioner may employ such deputies and assistants as may be necessary, and such deputies and assistants, in the discretion of the commissioner, may be vested with the same authority conferred upon the commissioner by this chapter.

(4) For the purpose of defraying a portion of the examination and administrative expenses incurred by the commissioner, each licensee shall pay at the time of examination the actual expenses of the examination, not to exceed Two Hundred Dollars ($200.00) per day for the time actually devoted to examining the business of the licensee. However, for any examination other than one conducted because of suspected blatant violation of this chapter, the amount charged to any single licensee in any one (1) year shall not exceed Two Thousand Dollars ($2,000.00).

(5) The commissioner may impose and collect an administrative fine against any person found to have charged or collected a service charge or advance fee from a borrower before a loan is actually found, obtained and closed for such borrower. Such fine shall not exceed Five Thousand Dollars ($5,000.00) for each violation.

(6) Whenever the commissioner has reasonable cause to believe that any person is violating any of the provisions of this chapter, in addition to all other remedies provided herein, the commissioner may, by, through and on the relation of the Attorney General, district attorney or county attorney, apply to a court of competent jurisdiction for an injunction, both temporary and permanent, to restrain such person from engaging in or continuing such violation of the provisions of this chapter or from doing any act or acts in furtherance thereof.

(7) The commissioner may, after notice and hearing, impose an administrative fine against any licensee if the licensee or employee is adjudged by the commissioner to be in violation of the provisions of this chapter. The administrative fine shall not exceed Five Hundred Dollars ($500.00) per violation and shall be deposited into the Consumer Finance Fund of the Department of Banking and Consumer Finance.

SOURCES: Laws, 1992, ch. 485, § 9; Laws, 2000, ch. 621, § 32, eff from and after passage (approved May 23, 2000.)

§ 81-19-18. Commissioner authorized to examine persons suspected of conducting business requiring a license.

The commissioner, or his duly authorized representative, for the purpose of discovering violations of this chapter and for the purpose of determining whether persons are subject to the provisions of this chapter, may examine persons licensed under this chapter and persons reasonably suspected by the commissioner of conducting business that requires a license under this chapter, including all relevant books, records and papers employed by those persons in the transaction of their business, and may summon witnesses and examine them under oath concerning matters relating to the business of those persons, or such other matters as may be relevant to the discovery of violations of this chapter, including without limitation the conduct of business without a license as required under this chapter.

SOURCES: Laws, 2000, ch. 621, § 34, eff from and after passage (approved May 23, 2000.)

§ 81-19-19. Deposit of funds collected into Consumer Finance Fund.

All funds coming into the possession of the commissioner as a result of this chapter, including all annual fees and examination fees, shall be deposited by the commissioner into the special fund in the State Treasury known as the

"Consumer Finance Fund," and shall be expended by the commissioner solely and exclusively for the administration and enforcement of this chapter.

SOURCES: Laws, 1992, ch. 485, § 10; Laws, 2000, ch. 621, § 33, eff from and after passage (approved May 23, 2000.)

§ 81-19-21. Contracts to be written; enumeration of charges.

A licensee may not enter into an agreement to find and obtain a consumer loan for a borrower unless the agreement is in writing. The contract shall indicate a range acceptable to the borrower of the financing terms, the interest rate, loan charges and fees, and any other charges.

If the loan is to be secured by real property, the contract must enumerate and describe the types of charges which are likely to be made, with a range for each stated, including: discount points, origination fee, appraisals, surveys, title opinions, title insurance and prepaid taxes and insurance premiums. Should the total actual costs at closing exceed the estimate by the greater of ten percent (10%) or Two Hundred Dollars ($200.00), the licensee shall obtain a written agreement from the borrower that the borrower has elected to consummate the transaction even though not obligated to do so. However, any loan charges made by a licensee under the Small Loan Regulatory Law (Sections 75-67-101 through 75-67-137) and the Small Loan Privilege Tax Law (Sections 75-67-201 through 75-67-247) shall be enumerated, described and assessed in the manner provided by Section 75-67-121, Mississippi Code of 1972.

SOURCES: Laws, 1992, ch. 485, § 11, eff from and after July 1, 1992.

§ 81-19-23. Activities prohibited; violation; penalties; borrower's remedies.

(1) No consumer loan broker may:

(a) Charge or collect any service charge or advance fee from a borrower unless and until a loan is actually found, obtained and closed for that borrower, and in no event shall a service charge exceed three percent (3%) of the original principal amount of the loan or a fee of Twenty-five Dollars ($25.00), whichever is greater;

(b) Advertise:

(i) Using false, misleading or deceptive statements regarding the services provided by the consumer loan broker, the amount of service charge or the rates, terms and conditions of any loan which might be obtained through the services of the consumer loan broker;

(ii) Using the terms "insured," "bonded," "guaranteed" or "secured" with regard to the consumer loan broker's services or to any loan which might be obtained through the services of the consumer loan broker; or

(iii) Without including the full name and address of the consumer loan broker;

(c) Act as a lender on any consumer loan transaction from which the consumer loan broker receives a service charge from the borrower;

(d) Receive a service charge from a borrower on any consumer loan made by an affiliated lender, meaning a lender under common control or ownership with the consumer loan broker;

(e) Receive a service charge on any consumer loan from which the consumer loan broker also receives compensation as a licensed real estate broker or real estate salesman, unless the fact of payment, the amount of the service charge and the identity of the consumer loan broker is fully disclosed to the borrower;

(f) Accept an assignment of wages or salary from any borrower for any purpose;

(g) Make a false promise in order to influence or induce a person to use the consumer loan broker's services, whether made through agents, employees, advertising or otherwise;

(h) Misrepresent or conceal essential or material facts regarding the consumer loan broker's services on any transaction under this chapter;

(i) Withhold or suppress information from the commissioner or refuse to permit an examination of the consumer loan broker's records by the commissioner or his agent;

(j) Fail to disburse funds in compliance with written agreements or to account for all monies received and disbursed; or

(k) Fail to comply with the provisions of this chapter or of the regulations of the commissioner.

(2) Any person who knowingly violates any provision of this section shall be guilty of a felony and, upon conviction thereof, shall be punished by a fine of not more than One Thousand Dollars ($1,000.00) or by commitment to the custody of the State Department of Corrections for a term of not more than three (3) years, or by both such fine and commitment.

(3)(a) Any borrower injured by a violation of this section may bring an action for recovery of damages. Judgment shall be entered for actual damages but in no case shall be less than the amount paid by the borrower to the loan broker, plus reasonable attorney's fees and costs. An award may also be entered for punitive damages.

(b) Any borrower injured by a violation of this section may bring an action against the surety bond or trust account, if any, of the loan broker.

(c) The remedies provided under this section are in addition to any other procedures or remedies for any violation or conduct provided for in any other law.

SOURCES: Laws, 1992, ch. 485, § 12; Laws, 1999, ch. 505, § 1; Laws, 2004, ch. 370, § 2, eff from and after passage (approved Apr. 20, 2004.)

JUDICIAL DECISIONS

1. Specific evidence required.

Grant of summary judgment in favor of a lending company, an agent, and others (appellees) in the husband's and wife's action alleging that there were violations of Miss. Code Ann. § 81-19-23 was proper because, besides their allegations, the husband and wife did not put forth any specific evidence of any wrongdoing by appellees sufficient to withstand summary judgment. Dominquez v. Palmer, 970 So. 2d 737 (Miss. Ct. App. 2007).

§ 81-19-25. Records of licensee; retention.

(1) A licensee shall retain a complete record of each transaction under this chapter for a period of two (2) years from the date of the closing of the loan. The commissioner may prescribe by regulation the form and nature of the records to be retained.

(2) All records must be housed at the licensed location unless specific permission is secured from the commissioner to maintain them at another location within the state.

SOURCES: Laws, 1992, ch. 485, § 13, eff from and after July 1, 1992.

§ 81-19-27. Separate account required for charges and fees collected by broker; authorization to withdraw from account.

(1) Loan charges and fees collected on behalf of a lender by the licensee from a borrower shall be deposited and kept in an account maintained solely for that purpose and totally apart and separate from the monies of the licensee.

(2) Withdrawals of loan charges and fees from the separate account shall be only at the direction of the lender, an escrow agent or a loan closing attorney. Proof of the authorization to withdraw and pay out loan charges and fees shall be retained by the licensee.

SOURCES: Laws, 1992, ch. 485, § 14, eff from and after July 1, 1992.

§ 81-19-29. Suspension or revocation of license; grounds; commissioner may to enter orders to require persons to refrain from violations.

(1) After notice and hearing, the commissioner may suspend or revoke any license if he finds that the licensee has knowingly and without exercising due care:

(a) Failed to pay the annual license fee imposed by this chapter or an examination fee imposed by the commissioner under authority of this chapter; or

(b) Violated any provision of this chapter or of any rule or regulation issued under this chapter.

(2) When the commissioner has reasonable cause to believe that a person is violating any provision of this chapter, the commissioner, in addition to and

without prejudice to the authority provided elsewhere in this chapter, may enter an order to require the person to stop or to refrain from the violation. The commissioner may sue in any circuit court of the state having jurisdiction and venue to enjoin the person from engaging in or continuing the violation or from doing any act in furtherance of the violation. In such an action, the court may enter an order or judgment awarding a preliminary or permanent injunction.

SOURCES: Laws, 1992, ch. 485, § 15; Laws, 2004, ch. 370, § 3, eff from and after passage (approved Apr. 20, 2004.)

Cross References — Right to hearing upon denial or revocation of license, see § 81-19-35.

§ 81-19-31. Service charge not to be construed as finance charge or interest.

Notwithstanding any provision of law to the contrary and specifically Section 75-17-25, Mississippi Code of 1972, a service charge as defined in this chapter shall not be construed to be finance charge or interest when paid to a licensed consumer loan broker by a borrower, or by a lender on behalf of and at the direction of the borrower, if the payment is made pursuant to a written contract between the consumer loan broker and the borrower as required by this chapter.

SOURCES: Laws, 1992, ch. 485, § 16, eff from and after July 1, 1992.

Cross References — Definition of "finance charge", see § 75-17-25.

§ 81-19-33. Effect of failure to comply with chapter on underlying transaction.

The failure of a licensed consumer loan broker to comply with this chapter in the finding and obtaining of a consumer loan for a borrower shall not affect the validity and enforceability of any debt, mortgage, deed of trust or any other lien interest in real or personal property, and a lender in the consumer loan or his assignee, holder or transferee is under no obligation to ascertain if this chapter has been complied with by the licensed consumer loan broker in the transaction.

SOURCES: Laws, 1992, ch. 485, § 17, eff from and after July 1, 1992.

§ 81-19-35. Right to hearing upon denial or revocation of license; notice; appeal; review.

When any license application is denied or any active license is revoked, the applicant or licensee has a right to a hearing before the commissioner at which the applicant or licensee may be represented by counsel. The demand for a hearing shall be in writing and shall be made within thirty (30) days after receipt of the denial or revocation. The commissioner shall set a date and time for the hearing no later than thirty (30) days after receipt of the demand. Public notice of the hearing shall be published in a newspaper of general circulation in the county where the license is proposed or is being operated. Such notice shall appear not less than ten (10) days before the date of the hearing and shall contain the date, time, place, identity of the parties involved and the purpose for which the hearing is to be held. All hearings shall be held in the office of the commissioner.

Any action of the commissioner after the hearing may be appealed by the applicant or licensee within ten (10) days from the date of such action by a writ of certiorari to the circuit court of the county where the business is proposed to be conducted or is being conducted, as provided by law in such cases.

The review by the court shall be on the record made before the commissioner; and copies of all applications, bonds and other papers and documents of every kind filed with the commissioner and the hearing shall be included in the record along with the transcript of the evidence.

SOURCES: Laws, 1992, ch. 485, § 18, eff from and after July 1, 1992.

Cross References — Denial of license, see § 81-19-11.
Grounds for suspension or revocation of license, see § 81-19-29.

CHAPTER 20

Consumer Complaints and Disputes Against Mortgage Companies

Sec.
81-20-1. Repealed.

§ 81-20-1. Repealed.

Repealed by Laws, 1999, ch. 505, § 2, eff from and after July 1, 2000.
[Laws, 1999, ch. 505, § 2, eff from and after July 1, 1999]

Editor's Note — Former § 81-20-1 provided for definitions of certain terms, and authorized the Commissioner of Banking and Consumer finance to investigate complaints against mortgage companies.

This section was repealed, effective July 1, 2000, pursuant to the terms of former subsection (3).

CHAPTER 21

Insurance Premium Finance Companies

Sec.
81-21-1. Definitions.
81-21-3. License requirement; fees; deposit of fee revenues in Consumer Finance Fund; license application form; promulgation of rules and regulations.
81-21-5. Investigation of license applicant; hearing for applicant found unqualified; conditions for issuance or renewal of license.
81-21-7. Revocation or suspension of license; grounds; right to hearing.
81-21-9. Penalty in lieu of revocation or suspension of license.
81-21-10. Commissioner authorized to examine persons suspected of conducting business requiring a license.
81-21-11. Records.
81-21-13. Premium finance agreement; contents.
81-21-15. Permissible charges; computation of interest; prepayment by insured.
81-21-17. Delinquency charges; collection costs.
81-21-19. Cancellation of insurance contracts; notice.
81-21-21. Return of unearned premiums to premium finance company; refund of excess to insured.
81-21-23. Filing of agreement unnecessary to perfect interest.
81-21-25. Deposit of revenues in Consumer Finance Fund.
81-21-27. Exclusions from coverage of chapter.

§ 81-21-1. Definitions.

The following words and phrases shall have the meanings ascribed herein unless the context clearly indicates otherwise:

(a) "Commissioner" means the Commissioner of Banking and Consumer Finance.

(b) "Person" means an individual, partnership, association, business corporation, nonprofit corporation, common-law trust, joint-stock company or any other entity, however organized.

(c) "Premium finance agreement" means an agreement by which an insured or prospective insured promises to pay to a premium finance company the amount advanced or to be advanced to an insurer or to an insurance agent or broker in payment of premiums of an insurance contract together with interest or discount and a service charge, as authorized and limited by Sections 81-21-13 through 81-21-23.

(d) "Premium finance company" means a person engaged in the business of entering into premium finance agreements or acquiring premium finance agreements from other premium finance companies.

(e) "Records" or "documents" means any item in hard copy or produced in a format of storage commonly described as electronic, imaged, magnetic, microphotographic or otherwise, and any reproduction so made shall have the same force and effect as the original thereof and be admitted in evidence equally with the original.

SOURCES: Laws, 1992, ch. 569, § 1; Laws, 2000, ch. 621, § 35; Laws, 2010, ch. 317, § 2, eff from and after Oct. 1, 2010.

§ 81-21-3. License requirement; fees; deposit of fee revenues in Consumer Finance Fund; license application form; promulgation of rules and regulations.

(1) No person shall engage in the business of a premium finance company in this state without first having obtained a license as a premium finance company from the commissioner.

(2) With each initial application for a license, the applicant shall pay to the commissioner at the time of making the application a license fee of Seven Hundred Fifty Dollars ($750.00), and for renewal applications, an annual renewal fee of Four Hundred Seventy-five Dollars ($475.00) payable as of the first day of July of each year to the commissioner for deposit into the special fund in the State Treasury designated as the "Consumer Finance Fund." The commissioner may employ persons as necessary to administer this chapter and to examine or investigate and make reports on violations of this chapter.

(3) The commissioner may charge the licensee an examination fee in an amount not less than Three Hundred Dollars ($300.00) nor more than Six Hundred Dollars ($600.00) for each office or location within the State of Mississippi, plus any actual expenses incurred while examining the licensee's records or books that are located outside the State of Mississippi. However, in no event shall a licensee be examined more than once in a two-year period unless for cause shown based upon consumer complaint and/or other exigent reasons as determined by the commissioner. Those fees shall be payable in addition to other fees and taxes now required by law and shall be expendable receipts for the use of the commissioner in defraying the cost of the administration of this chapter.

All fees, license tax and penalties provided for in this chapter that are payable to the commissioner shall, when collected by him or his designated representative, be deposited in the special fund in the State Treasury known as the "Consumer Finance Fund" and shall be expended by the commissioner solely and exclusively for the purpose of administering and enforcing the provisions of this chapter.

(4) Application for licensing shall be made on forms prepared by the commissioner and shall contain the following information:

(a) Name, business address and telephone number of the premium finance company;

(b) Name and business address of corporate officers and directors or principals or partners; and

(c) A sworn statement by an appropriate officer, principal or partner of the premium finance company that:

(i) The premium finance company is financially capable to engage in the business of insurance premium financing;

(ii) If a corporation, that the corporation is authorized to transact business in this state; and

(iii) If any material change occurs in the information contained in the registration form, a revised statement shall be submitted to the commissioner.

(5) The commissioner is authorized to promulgate rules and regulations to effectuate the purposes of this chapter. All such rules and regulations shall be promulgated in accordance with the provisions of the Mississippi Administrative Procedures Law.

SOURCES: Laws, 1992, ch. 569, § 2; Laws, 2000, ch. 621, § 36; Laws, 2004, ch. 450, § 5, eff from and after passage (approved Apr. 28, 2004.)

§ 81-21-5. Investigation of license applicant; hearing for applicant found unqualified; conditions for issuance or renewal of license.

(1) Upon the filing of an application and the payment of the license fee, the commissioner shall make an investigation of each applicant and shall issue a license if the application is qualified in accordance with this chapter. If the commissioner does not so find, he or she, at the request of the applicant, shall give the application a full hearing in accordance with the Mississippi Administrative Procedures Law.

(2) The commissioner shall issue or renew a license when he or she is satisfied that the person to be licensed:

(a) Is competent and trustworthy and intends to act in good faith;

(b) Has a good business reputation and has had the experience or training or possesses the abilities so as to be qualified to act as a premium finance company;

(c) If a corporation, is incorporated under the laws of this state or, if a foreign corporation, is authorized to transact business in this state.

SOURCES: Laws, 1992, ch. 569, § 3, eff from and after July 1, 1992.

§ 81-21-7. Revocation or suspension of license; grounds; right to hearing.

(1) The commissioner may revoke or suspend the license of any premium finance company when after investigation the commissioner finds that:

(a) The license was obtained by material misrepresentation or fraud;

(b) The holder of the license has shown himself untrustworthy or incompetent to act as a premium finance company; or

(c) The licensee has violated any of the provisions of this chapter.

(2) Before the commissioner shall revoke, suspend or refuse to renew the license of any premium finance company, the person aggrieved shall be entitled to a hearing in accordance with the Mississippi Administrative Procedures Law.

SOURCES: Laws, 1992, ch. 569, § 4, eff from and after July 1, 1992.

Cross References — Mississippi Administrative Procedures Law, see §§ 25-43-1 et seq.

Penalty in lieu of revocation or suspension of license for violation of chapter, see § 81-21-9.

§ 81-21-9. Penalty in lieu of revocation or suspension of license.

(1) In lieu of revoking or suspending the license for any of the causes enumerated in this chapter, after a hearing as provided in Section 81-21-7, the commissioner may subject the company to a penalty not to exceed Five Hundred Dollars ($500.00) for each offense when the commissioner finds that the public interest would not be harmed by the continued operation of the company. The amount of any such penalty shall be paid by the company to the commissioner for deposit into the special fund in the State Treasury designated as the "Consumer Finance Fund." At any hearing provided by this chapter, the commissioner shall have authority to administer oaths to witnesses. Anyone testifying falsely, after having been administered such oath, shall be subject to the penalty of perjury.

(2) If any person engages in business as provided for in this chapter without paying the license fee provided for in this chapter before commencing business or before the expiration of the person's current license, as the case may be, then the person shall be liable for the full amount of the license fee, plus a penalty in an amount not to exceed Twenty-five Dollars ($25.00) for each day that the person has engaged in the business without a license or after the expiration of a license.

(3) When the commissioner has reasonable cause to believe that a person is violating any provision of this chapter, the commissioner, in addition to and without prejudice to the authority provided elsewhere in this chapter, may enter an order requiring the person to stop and refrain from the violation. The commissioner may sue in any circuit court of the state having jurisdiction and venue to enjoin the person from engaging in or continuing the violation or from doing any act in furtherance of the violation. In such an action, the court may enter an order or judgment awarding a preliminary or permanent injunction.

SOURCES: Laws, 1992, ch. 569, § 5; Laws, 2000, ch. 621, § 37; Laws, 2004, ch. 450, § 6, eff from and after passage (approved Apr. 28, 2004.)

Cross References — Deposit of all revenues collected pursuant to this section into the Consumer Finance Fund, see § 81-21-25.

§ 81-21-10. Commissioner authorized to examine persons suspected of conducting business requiring a license.

The commissioner, or his duly authorized representative, for the purpose of discovering violations of this chapter and for the purpose of determining whether persons are subject to the provisions of this chapter, may examine persons licensed under this chapter and persons reasonably suspected by the commissioner of conducting business that requires a license under this chapter, including all relevant books, records and papers employed by those persons in the transaction of their business, and may summon witnesses and examine them under oath concerning matters relating to the business of those persons, or such other matters as may be relevant to the discovery of violations of this chapter, including without limitation the conduct of business without a license as required under this chapter.

SOURCES: Laws, 2000, ch. 621, § 38, eff from and after passage (approved May 23, 2000.)

§ 81-21-11. Records.

(1) A premium finance company shall maintain records of its premium finance transactions.

(2) A premium finance company shall preserve its records of premium finance transactions, including preservation by means of electronic data processing or computer records, for at least two (2) years after making the final entry with respect to any premium finance agreement. The preservation of records in photographic, microfilm or microfiche form constitutes compliance with this section.

SOURCES: Laws, 1992, ch. 569, § 6, eff from and after July 1, 1992.

§ 81-21-13. Premium finance agreement; contents.

A premium finance agreement shall:

(a) Be dated and signed by or on behalf of the insured, and the printed portion thereof shall be in at least eight-point type;

(b) Contain the name and place of business of the insurance agent or broker negotiating the related insurance contract, the name and residence or place of business of the insured, the name and place of business of the premium finance company, a brief description of the insurance contracts involved and the amount of the premium; and

(c) Set forth the following items, where applicable:

(i) The total amount of the premium, less an itemized listing of any nonrefundable charges;

(ii) The amount of the down payment;

(iii) The principal balance, which is the difference between the amounts stated under subparagraphs (i) and (ii) of this paragraph;

(iv) The amount of the interest and the annual percentage rate;

(v) The balance payable by the insured, meaning the sum of amounts stated under subparagraphs (iii) and (iv) of this paragraph; and

(vi) The number of installments required, the amount of each installment expressed in dollars and the due date or period thereof.

SOURCES: Laws, 1992, ch. 569, § 7; Laws, 2004, ch. 450, § 7, eff from and after passage (approved Apr. 28, 2004.)

Cross References — Application of this section to definition of "premium finance agreement", see § 81-21-1.

§ 81-21-15. Permissible charges; computation of interest; prepayment by insured.

(1) A premium finance company shall not charge, contract for, receive or collect any interest or service charge other than as permitted in this section.

(2) The interest is to be computed on the balance of the premiums due, after subtracting the down payment made by the insured in accordance with the premium finance agreement, from the effective date of the insurance contract or as otherwise agreed to by the parties, for which the premiums are being advanced, to the date when the final installment of the premium finance agreement is payable.

(3) Notwithstanding any provision of law to the contrary, for any loan or extension of credit in an amount of Ten Thousand Dollars ($10,000.00) or less, made by a licensee under this chapter, the licensee may contract for and receive any finance charge agreed to in writing by the licensee and the insured, not to exceed twenty-four percent (24%) per annum on the unpaid balance; however, if the loan or extension of credit is in an amount more than Ten Thousand Dollars ($10,000.00), the licensee may contract for and receive any finance charge agreed to in writing by the licensee and the insured.

(4) Notwithstanding the provisions of any premium finance agreement, any insured shall receive a refund of the unearned finance charge, based on the Rule of 78's, upon the voluntary prepayment of the obligation in full or upon the cancellation of such contract. Where the amount of the refund credit is less than Three Dollars ($3.00), no refund need be made.

SOURCES: Laws, 1992, ch. 569, § 8; Laws, 2004, ch. 450, § 8, eff from and after passage (approved Apr. 28, 2004.)

Cross References — Application of this section to definition of "premium finance agreement", see § 81-21-1.

§ 81-21-17. Delinquency charges; collection costs.

(1) A premium finance agreement may provide for the payment by the insured of a delinquency charge of up to five percent (5%) of any installment which is in default for a period of more than five (5) days. If the premium finance agreement is primarily for personal, family or household purposes then the maximum delinquency charge shall be Fifteen Dollars ($15.00). If the default results in the cancellation of any insurance contract listed in the agreement, the agreement may provide for the payment by the insured of a cancellation charge of Fifteen Dollars ($15.00). The agreement may also provide for a returned check fee of Fifteen Dollars ($15.00) for each installment payment check returned by the bank.

(2) A premium finance agreement may provide for payment of collection costs and attorney's fees equal to twenty percent (20%) of the outstanding indebtedness if the premium finance agreement is referred for collection to a collection agency or to an attorney who is not a salaried employee of the premium finance company.

(3) None of the charges referred to in this section shall be considered, directly or indirectly, in determining whether a violation of the usury laws has occurred under a premium finance agreement.

SOURCES: Laws, 1992, ch. 569, § 9, eff from and after July 1, 1992.

Cross References — Application of this section to definition of "premium finance agreement", see § 81-21-1.

§ 81-21-19. Cancellation of insurance contracts; notice.

(1) When a premium finance agreement contains a power of attorney clause enabling the premium finance company to cancel any insurance contract or contracts listed in the agreement, the insurance contract or contracts shall not be cancelled by the premium finance company unless such cancellation is done in accordance with this section.

(2) Not less than ten (10) days' written notice shall be mailed to the insured, at the last known address shown on the records of the premium finance company, of the intent of the premium finance company to cancel the insurance contract unless the default is cured within such ten-day period.

(3) After expiration of such ten-day period, the premium finance company may thereafter cancel such insurance contract or contracts by sending to the insurer a notice of cancellation. The insurance contract shall be cancelled as if such notice of cancellation had been submitted by the insured, but without requiring the return of the insurance contract or contracts. The premium finance company shall also mail a copy of the notice of cancellation to the insured at the last known address shown on the records of the premium finance company.

(4) All statutory, regulatory and contractual restrictions providing that the insurance contract may not be cancelled unless notice is given to a governmental agency, mortgagee or third party other than the insured shall apply where cancellation is effected under the provisions of this section. The insurer shall give the prescribed notice on behalf of itself or the insured to any governmental agency, mortgagee or other third party on or before the fifth business day after the day it receives the notice of cancellation from the premium finance company and shall determine the effective date of cancellation taking into consideration the number of days' notice required to complete the cancellation.

(5) No liability of any nature whatsoever either in favor of the insured, any governmental agency, mortgagee or third party shall be imposed upon the insurer as a result of any misstatement of fact contained in such notice of cancellation or statement furnished by the insurance premium finance company to the insurer.

SOURCES: Laws, 1992, ch. 569, § 10, eff from and after July 1, 1992.

Cross References — Application of this section to definition of "premium finance agreement", see § 81-21-1.

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance § 402.

§ 81-21-21. Return of unearned premiums to premium finance company; refund of excess to insured.

(1) Whenever a financed insurance contract is cancelled, the insurer shall return to the premium finance company as soon as reasonably possible whatever gross unearned premiums are due under the insurance contract, and also shall furnish to the premium finance company a report setting forth an itemization of the unearned premiums under the policy that includes a detailed mathematical summary of the computation of the return premium.

(2) If a premium is subject to an audit to determine the final premium amount, the gross unearned premium shall be calculated upon the deposit premium and the insurer shall return whatever gross unearned premiums are due based upon that deposit to the finance company for the account of the insured.

(3) If the crediting of return premiums to the account of the insured results in a surplus over the amount due from the insured, the premium finance company shall refund the excess to the insured, provided that no such refund shall be required if it amounts to less than Three Dollars ($3.00).

SOURCES: Laws, 1992, ch. 569, § 11; Laws, 1997, ch. 332, § 6; Laws, 1999, ch. 336, § 1; Laws, 2006, ch. 354, § 1; Laws, 2010, ch. 317, § 1, eff from and after Oct. 1, 2010.

Cross References — Application of this section to definition of "premium finance agreement", see § 81-21-1.

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance § 917.

§ 81-21-23. Filing of agreement unnecessary to perfect interest.

No filing of the premium finance agreement shall be necessary to perfect the validity of such agreement as a secured transaction as against creditors, subsequent purchasers, pledgees, encumbrancers, trustees in bankruptcy or any other insolvency proceeding under any law or anyone having the status or power of the aforementioned or their successors or assigns.

SOURCES: Laws, 1992, ch. 569, § 12, eff from and after July 1, 1992.

Cross References — Application of this section to definition of "premium finance agreement", see § 81-21-1.

§ 81-21-25. Deposit of revenues in Consumer Finance Fund.

All revenues collected by or paid to the commissioner under the provisions of Section 81-21-9 shall be forwarded immediately to the State Treasurer, who shall deposit them into the special fund in the State Treasury designated as the "Consumer Finance Fund."

SOURCES: Laws, 1992, ch. 569, § 13, eff from and after July 1, 1992.

§ 81-21-27. Exclusions from coverage of chapter.

This chapter shall not apply to:

(a) The financing of insurance premiums by any seller who sells goods or services pursuant to an installment sales contract in which a time price differential is charged, or to any savings and loan association, savings bank, bank, trust company, finance company, credit union or mortgage company;

(b) Any insurance company, association or exchange authorized to do business in this state which solely finances the insurance premiums for its insurance policies, or a subsidiary of an authorized insurer admitted in this state or a corporation under substantially the same management or control as an admitted insurer or group of insurers, where such subsidiary, managed or controlled company is engaged in the business of financing insurance premiums on policies issued only by its parent insurer or affiliated group of insurers; and

(c) Any insurance agent or producing agent licensed to do business in this state who finances premiums on policies solely written by such agent or producing agent.

SOURCES: Laws, 1992, ch. 569, § 14; Laws, 1997, ch. 332, § 7, eff from and after passage (approved March 17, 1997).

ATTORNEY GENERAL OPINIONS

The statute does not permit an insurance agent to pay an insurance premium for a client and then bill the client for the premium paid plus any finance charges for amounts that are past due to the agent. Dale, Nov. 12, 1999, A.G. Op. #99-0615.

CHAPTER 22

Mississippi Debt Management Services Act [Repealed effective July 1, 2016]

Sec.
81-22-1. Short title [Repealed effective July 1, 2016].
81-22-3. Definitions [Repealed effective July 1, 2016].
81-22-5. Licensure and annual relicensure [Repealed effective July 1, 2016].
81-22-7. Bond required [Repealed effective July 1, 2016].
81-22-9. Handling of consumer funds [Repealed effective July 1, 2016].
81-22-11. Requirement for written agreement [Repealed effective July 1, 2016].
81-22-13. Fees charged to the consumer [Repealed effective July 1, 2016].
81-22-15. Reports and records [Repealed effective July 1, 2016].
81-22-17. Powers and functions of commissioner [Repealed effective July 1, 2016].
81-22-19. Prohibited acts [Repealed effective July 1, 2016].
81-22-21. Advertising [Repealed effective July 1, 2016].
81-22-23. Effects of violations on rights of parties [Repealed effective July 1, 2016].
81-22-25. Suspension or revocation of registration [Repealed effective July 1, 2016].
81-22-27. Commissioner authorized to hire additional full-time employees [Repealed effective July 1, 2016].
81-22-28. Written notice of intent by licensee to use third-party payment processor; content of notice; surety bond required; examination of third-party payment processor records by department; termination of agreement or contract with third-party payment processor. [Repealed effective July 1, 2016].
81-22-29. Repealed
81-22-31. Repeal of Sections 81-22-1 through 81-22-28.

§ 81-22-1. Short title [Repealed effective July 1, 2016].

This chapter may be known and cited as the "Mississippi Debt Management Services Act."

SOURCES: Laws, 2003, ch. 465, § 1; reenacted and amended, Laws, 2006, ch. 398, § 1; reenacted without change, Laws, 2010, ch. 396, § 1; reenacted without change, Laws, 2013, ch. 348, § 1; reenacted without change, Laws, 2015, ch. 325, § 1, eff from and after July 1, 2015.

Editor's Note — For repeal of this section, see § 81-22-31.

Laws of 2003, ch. 465, § 16, which repealed Sections 81-22-1 through 81-22-27 and Section 81-22-29, effective July 1, 2006, was subsequently repealed by Laws of 2006, ch. 398, § 17, effective from and after July 1, 2006.

Amendment Notes — The 2015 amendment reenacted the section without change.

§ 81-22-3. Definitions [Repealed effective July 1, 2016].

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings:

(a) "Commissioner" means the Commissioner of Banking and Consumer Finance of the State of Mississippi.

(b) "Debt management service" means:

(i) The receiving of money from a consumer for the purpose of distributing one or more payments to or among one or more creditors of the consumer in full or partial payment of the consumer's obligation;

(ii) Arranging or assisting a consumer to arrange for the distribution of one or more payments to or among one or more creditors of the consumer in full or partial payment of the consumer's obligation;

(iii) Exercising control, directly or indirectly, or arranging for the exercise of control over funds of the consumer for the purpose of distributing payments to or among one or more creditors of the consumer;

(iv) Acting or offering to act as an intermediary between a consumer and one or more creditors of the consumer for the purpose of adjusting, compromising, negotiating, settling, discharging or otherwise deferring, reducing or altering the terms of payment of the consumer's obligation; or

(v) Improving or offering to improve a consumer's credit record, history or rating.

(c) "Debt management service provider" means a person that provides or offers to provide to a consumer in this state any debt management services, in return for a fee or other consideration. "Debt management service provider" does not include:

(i) Those situations involving debt adjusting incurred incidentally in the lawful practice of law in this state;

(ii) Those situations involving credit report error correction services and situations covered under paragraph (b)(v) of this section when performed in the lawful practice of law in this state;

(iii) Title insurers who adjust debts out of escrow funds only incidentally in the regular course of their principal business;

(iv) Judicial officers or others acting under court orders;

(v) Those situations involving debt adjusting incurred incidentally in connection with the lawful practice as a certified public accountant;

(vi) Bona fide trade or mercantile associations in the course of arranging adjustment of debts with business establishments;

(vii) Employers who adjust debts for their employees;

(viii) Any person who, at the request of a debtor, makes a loan to the debtor, and who, at the authorization of the debtor, acts as an adjuster of the debtor's debts solely in the disbursement of the proceeds of the loan, without compensation for the services rendered in adjusting the debts;

(ix) Any institution that is regulated, supervised or licensed by the department or any out-of-state institution that is insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration; or

(x) Licensed attorneys engaged in the lawful practice of law.

(d) "Department" means the Department of Banking and Consumer Finance of the State of Mississippi.

(e) "Fair share contribution" means voluntary contributions paid to the licensee by the creditor for collecting funds from clients pursuant to debt management services.

(f) "Licensee" means a person or entity who is required to be licensed as a debt management service provider.

(g) "Person" means an individual or an organization.

(h) "Records" or "documents" means any item in hard copy or produced in a format of storage commonly described as electronic, imaged, magnetic, microphotographic or otherwise, and any reproduction so made shall have the same force and effect as the original thereof and be admitted in evidence equally with the original.

(i) "Third-party payment processor" means any entity that holds, or has access to, or can effectuate possession of, by any means, the monies of a licensee's debtors, or distributes, or is in the chain or distribution of such monies, to the creditors of such debtors, pursuant to an agreement or contract with the licensee. This term shall not include entities that solely provide the electronic routing and settlement of financial transactions and their sponsoring banks.

SOURCES: Laws, 2003, ch. 465, § 2; reenacted and amended, Laws, 2006, ch. 398, § 2; Laws, 2008, ch. 332, § 1; reenacted without change, Laws, 2010, ch. 396, § 2; reenacted without change, Laws, 2013, ch. 348, § 2; reenacted without change, Laws, 2015, ch. 325, § 2, eff from and after July 1, 2015.

Editor's Note — For repeal of this section, see § 81-22-31.
Amendment Notes — The 2015 amendment reenacted the section without change.

§ 81-22-5. Licensure and annual relicensure [Repealed effective July 1, 2016].

(1) **Licensure and relicensure.** — No person or entity may act as a debt management service provider with respect to consumers who are residents of this state without a license issued under this chapter. The license application must be in a form prescribed by the commissioner. The commissioner may refuse the application if it contains erroneous or incomplete information. A license may not be issued unless the commissioner, upon investigation, finds that the financial soundness and responsibility, insurance coverage, consumer education programs and services component, character and fitness of the applicant and, when applicable, its partners, officers or directors, warrant belief that the business will be operated honestly and fairly within the purposes of this chapter. Each license shall remain in full force and effect until relinquished, suspended, revoked or expired. With each initial application for a license, the applicant shall pay to the commissioner a license fee of Seven Hundred Fifty Dollars ($750.00), and on or before December 31 of each year thereafter, an annual renewal fee of Four Hundred Seventy-five Dollars ($475.00). If the annual renewal fee remains unpaid after December 31, the license shall expire. If any person engages in business as provided for in this chapter without paying the license fee provided for in this subsection before beginning business or before the expiration of the person's current license, as the case may be, then the person shall be liable for the full amount of the license fee, plus a penalty in an amount not to exceed Twenty-five Dollars

($25.00) for each day that the person has engaged in such business without a license or after the expiration of a license. All licensing fees and penalties shall be paid into the Consumer Finance Fund of the department.

(2) **Action on registration application.** — The commissioner shall take action on an application within thirty (30) days after the commissioner has accepted the application as complete. Upon written request, the applicant is entitled to a hearing on the question of the applicant's qualifications for license if the commissioner has notified the applicant in writing that the application has been denied or the commissioner has not issued a license within thirty (30) days after the application for the license was accepted as complete by the commissioner. A request for a hearing may not be made more than sixty (60) days after the application was accepted as complete or the commissioner has mailed a written notice to the applicant stating that the application has been denied and stating the reasons for the denial of the application.

SOURCES: Laws, 2003, ch. 465, § 3; reenacted and amended, Laws, 2006, ch. 398, § 3; reenacted without change, Laws, 2010, ch. 396, § 3; reenacted without change, Laws, 2013, ch. 348, § 3; reenacted without change, Laws, 2015, ch. 325, § 3, eff from and after July 1, 2015.

Editor's Note — For repeal of this section, see § 81-22-31.
Amendment Notes — The 2015 amendment reenacted the section without change.

§ 81-22-7. Bond required [Repealed effective July 1, 2016].

To be eligible for a license, an applicant shall file with the commissioner a bond with good security in the penal sum of Fifty Thousand Dollars ($50,000.00), payable to the State of Mississippi for the faithful performance by the licensee of the duties and obligations pertaining to the business so licensed and the prompt payment of any judgment that may be recovered against the licensee on account of charges or other claims arising directly or collectively from any violation of the provisions of this chapter. The applicant may file, in lieu of the bond, cash, a certificate of deposit or government bonds in the amount of Fifty Thousand Dollars ($50,000.00). Those deposits shall be filed with the commissioner and are subject to the same terms and conditions as are provided for in the surety bond required in this paragraph. Any interest or earnings on those deposits are payable to the depositor.

SOURCES: Laws, 2003, ch. 465, § 4; reenacted and amended, Laws, 2006, ch. 398, § 4; reenacted without change, Laws, 2010, ch. 396, § 4; reenacted without change, Laws, 2013, ch. 348, § 4; reenacted without change, Laws, 2015, ch. 325, § 4, eff from and after July 1, 2015.

Editor's Note — For repeal of this section, see § 81-22-31.
Amendment Notes — The 2015 amendment reenacted the section without change.

§ 81-22-9. Handling of consumer funds [Repealed effective July 1, 2016].

(1) **Funds deposited in escrow account.** — The debt management service provider shall deposit, within two (2) business days of receipt, all funds received from or on behalf of a consumer for payment to a creditor or creditors in a federally insured escrow account for the benefit of the consumer in a supervised financial organization. Any escrow account established to receive consumer funds is free from trustee process and unavailable to creditors of the debt management service provider.

(2) **Requirements for handling of funds.** — The debt management service provider shall:

(a) Maintain separate records of account for each consumer receiving debt management services;

(b) Remit funds received from or on behalf of a consumer to the consumer's creditor or creditors within fifteen (15) business days of receipt of the funds; and

(c) Correct or remedy any misdirected payments resulting from an error by the debt management service provider and reimburse the consumer for any actual costs or fees imposed by a creditor as a result of such misdirection.

(3) **Commingling of funds.** — The debt management service provider may not commingle escrow accounts established for the benefit of consumers with any operating accounts of the debt management service provider.

SOURCES: Laws, 2003, ch. 465, § 5; reenacted and amended, Laws, 2006, ch. 398, § 5; reenacted without change, Laws, 2010, ch. 396, § 5; reenacted without change, Laws, 2013, ch. 348, § 5; reenacted without change, Laws, 2015, ch. 325, § 5, eff from and after July 1, 2015.

Editor's Note — For repeal of this section, see § 81-22-31.
Amendment Notes — The 2015 amendment reenacted the section without change.

§ 81-22-11. Requirement for written agreement [Repealed effective July 1, 2016].

(1) **Written agreement.** — A debt management service provider may not perform debt management services for a consumer unless the consumer and the debt management service provider first have executed a written agreement with regard to the debt management services to be provided. A copy of the completed agreement must be given to the consumer.

(2) **Required provisions.** — Each agreement between a consumer and a debt management service provider must be dated and signed by the consumer and must include the following:

(a) The name and address of the consumer and the debt management service provider;

(b) A full description of the services to be performed for the consumer, any fees to be charged to the consumer for those services and any contributions, fees or charges the consumer has agreed to make or pay to the debt management service provider;

(c) Disclosure of the existence of the surety bond on file with the commissioner under Section 81-22-7 and a notice that the consumer may contact the Department of Banking and Consumer Finance at P.O. Box 23729, Jackson, MS 39225-3729 or 1-800-844-2499 with any questions or complaints regarding the debt management service provider;

(d) The identification of the federally insured institution where funds remitted by a consumer for payment to one or more creditors will be held;

(e) The right of a party to cancel the agreement by providing a written notice of cancellation to the other party;

(f) A complete list of the consumer's obligations that are subject to the agreement and the names and addresses of the creditors holding those obligations;

(g) A full description and schedule of the periodic amounts to be remitted to the debt management service provider for payment to the consumer's creditor or creditors and the amounts to be remitted to each creditor;

(h) A notice to the consumer that by executing the agreement the consumer authorizes the federally insured institution to disclose financial records relating to the escrow account in which the consumer's funds are held under Section 81-22-9 to the commissioner during the course of any examination of the debt management service provider by the commissioner; and

(i) The following notice:

NOTICE TO CONSUMER: Do not sign this agreement before you read it. You must be given a copy of this agreement.

SOURCES: Laws, 2003, ch. 465, § 6; reenacted and amended, Laws, 2006, ch. 398, § 6; reenacted without change, Laws, 2010, ch. 396, § 6; reenacted without change, Laws, 2013, ch. 348, § 6; reenacted without change, Laws, 2015, ch. 325, § 6, eff from and after July 1, 2015.

Editor's Note — For repeal of this section, see § 81-22-31.

Amendment Notes — The 2015 amendment reenacted the section without change.

§ 81-22-13. Fees charged to the consumer [Repealed effective July 1, 2016].

A debt service management provider may only charge a consumer the following fees for providing debt management services:

(a) A maintenance fee not to exceed Thirty Dollars ($30.00) per month after a consumer has received a free initial counseling session;

(b) A one-time setup fee not to exceed Seventy-five Dollars ($75.00);

(c) A fee for obtaining the consumer's credit report not to exceed Fifteen Dollars ($15.00) for an individual report or Twenty-five Dollars ($25.00) for a joint report;

(d) A fee not to exceed Fifty Dollars ($50.00) for educational courses/products that will assist the consumer in achieving financial stability. Products shall be educational in nature and may include, but not be limited to, the following topics: Home Buyer Education, Financial Literacy Education, and Credit Report Review. However, the consumer must be informed that those courses and products are not a mandatory condition to receive debt management services; and

(e) A bankruptcy consultation fee, not to exceed Fifty Dollars ($50.00) per consumer, may be charged by nonprofit credit counseling agencies approved by the U.S. Trustees pursuant to 11 USC Section 111.

SOURCES: Laws, 2003, ch. 465, § 7; reenacted and amended, Laws, 2006, ch. 398, § 7; reenacted and amended, Laws, 2010, ch. 396, § 7; reenacted without change, Laws, 2013, ch. 348, § 7; reenacted without change, Laws, 2015, ch. 325, § 7, eff from and after July 1, 2015.

Editor's Note — For repeal of this section, see § 81-22-31.
Amendment Notes — The 2015 amendment reenacted the section without change.

§ 81-22-15. Reports and records [Repealed effective July 1, 2016].

(1) **Written reports to consumers.** — A debt management service provider shall provide to each consumer receiving debt management services periodic written reports accounting for funds received from the consumer for payment to the consumer's creditor or creditors whose obligations are listed in the consumer's agreement with the debt management service provider and disbursements made to each such creditor on the consumer's behalf since the last report. The debt management service provider shall provide those reports to the consumer not less than once each calendar quarter.

(2) **Maintenance of records.** — Any person required to be licensed under this chapter shall maintain in its offices, or such other location as the department permits, the books, accounts and records necessary for the department to determine whether or not the person is complying with the provisions of this chapter and the rules and regulations adopted by the department under this chapter. These books, accounts and records shall be maintained apart and separate from any other business in which the person is involved. A debt management service provider shall maintain books and records for each consumer for whom it provides debt management services for six (6) years following the final transaction with the consumer.

(3) **Verification of payments to creditors.** — Licensees that participate in fair share contributions with creditors shall maintain records that reflect client accounts were credited for the full amount of any payments due and not the net amount as a result of a fair share contribution. Such records may consist of either a copy of the client's statement from the creditor or the licensee may send a monthly or quarterly statement to clients that reflect payments remitted to creditors.

(4) Within fifteen (15) days of the occurrence of any of the following events, a licensee shall file a written report with the commissioner describing the event and its expected impact on the activities on the licensee's business in this state:

(a) The filing for bankruptcy or reorganization by the licensee;

(b) The institution of revocation or suspension proceedings against the licensee by any state or governmental authority; or

(c) Any felony indictment or conviction of the licensee or any of its directors or principal officers.

SOURCES: Laws, 2003, ch. 465, § 8; reenacted and amended, Laws, 2006, ch. 398, § 8; reenacted without change, Laws, 2010, ch. 396, § 8; reenacted without change, Laws, 2013, ch. 348, § 8; reenacted without change, Laws, 2015, ch. 325, § 8, eff from and after July 1, 2015.

Editor's Note — For repeal of this section, see § 81-22-31.
Amendment Notes — The 2015 amendment reenacted the section without change.

§ 81-22-17. Powers and functions of commissioner [Repealed effective July 1, 2016].

The commissioner may exercise the following powers and functions:

(a) **Complaint investigation.** — The commissioner may receive and act on complaints, take action to obtain voluntary compliance with this chapter or refer cases to the Attorney General, who shall appear for and represent the commissioner in court.

(b) **Rules.** — The commissioner may adopt reasonable administrative regulations, not inconsistent with law, for the enforcement of this chapter.

(c) **Examination of licensees.** — To assure compliance with the provisions of this chapter, the department may examine the books and records of any licensee without notice during normal business hours. The commissioner shall charge the licensee an examination fee in an amount not less than Three Hundred Dollars ($300.00) nor more than Six Hundred Dollars ($600.00) for each office or location within the State of Mississippi, plus any actual expenses incurred while examining the licensee's records or books that are located outside the State of Mississippi. However, in no event shall a licensee be examined more than once in a two-year period unless for cause shown based upon consumer complaint and/or other exigent reasons as determined by the commissioner.

(d) **Examination of nonlicensees.** — The department, its designated officers and employees, or its duly authorized representatives, for the purposes of discovering violations of this chapter and for the purpose of determining whether any person or individual reasonably suspected by the commissioner of conducting business that requires a license under this chapter, may investigate those persons and individuals and examine all relevant books, records and papers employed by those persons or individuals in the transaction of business, and may summon witnesses and examine them under oath concerning matters as to the business of those persons, or other such matters as may be relevant to the discovery of violations of this chapter, including, without limitation, the conduct of business without a license as required under this chapter.

SOURCES: Laws, 2003, ch. 465, § 9; reenacted and amended, Laws, 2006, ch. 398, § 9; reenacted without change, Laws, 2010, ch. 396, § 9; reenacted without change, Laws, 2013, ch. 348, § 9; reenacted without change, Laws, 2015, ch. 325, § 9, eff from and after July 1, 2015.

Editor's Note — For repeal of this section, see § 81-22-31.
Amendment Notes — The 2015 amendment reenacted the section without change.

§ 81-22-19. Prohibited acts [Repealed effective July 1, 2016].

A debt management service provider may not:

(a) **Purchase debt.** — Purchase any debt or obligation of a consumer;

(b) **Lend money.** — Lend money or provide credit to any consumer;

(c) **Mortgage interest.** — Obtain a mortgage or other security interest in property of a consumer;

(d) **Debt collector.** — Operate as a debt collector in this state; or

(e) **Negative amortization.** — Structure an agreement for the consumer that, at the conclusion of the projected term for the consumer's participation in the debt management service agreement, would result in negative amortization of any of the consumer's obligations to creditors.

SOURCES: Laws, 2003, ch. 465, § 10; reenacted without change, Laws, 2006, ch. 398, § 10; reenacted without change, Laws, 2010, ch. 396, § 10; reenacted without change, Laws, 2013, ch. 348, § 10; reenacted without change, Laws, 2015, ch. 325, § 10, eff from and after July 1, 2015.

Editor's Note — For repeal of this section, see § 81-22-31.
Amendment Notes — The 2015 amendment reenacted the section without change.

§ 81-22-21. Advertising [Repealed effective July 1, 2016].

(1) **False advertising.** — A debt management service provider may not engage in this state in false or misleading advertising concerning the terms and conditions of any services or assistance offered.

(2) **Required words.** — A debt management service provider may not advertise its services in Mississippi in any media disseminated primarily in this state, whether print or electronic, without the words "Licensed Debt Management Service Provider."

(3) **Dissemination; no liability.** — This section does not impose liability on the owner or personnel of any medium in which an advertisement appears or through which an advertisement is disseminated.

SOURCES: Laws, 2003, ch. 465, § 11; reenacted without change, Laws, 2006, ch. 398, § 11; reenacted without change, Laws, 2010, ch. 396, § 11; reenacted without change, Laws, 2013, ch. 348, § 11; reenacted without change, Laws, 2015, ch. 325, § 11, eff from and after July 1, 2015.

Editor's Note — For repeal of this section, see § 81-22-31.
Amendment Notes — The 2015 amendment reenacted the section without change.

§ 81-22-23. Effects of violations on rights of parties [Repealed effective July 1, 2016].

(1) **Violations; unfair, unconscionable or deceptive practices.** — A debt management service provider that violates any provision of this chapter or any rule adopted by the commissioner, or that through any unfair, unconscionable or deceptive practice causes actual damage to a consumer is subject to enforcement action under subsection (2) of this section.

(2) **Enforcement actions.** — The following enforcement actions may be taken by the commissioner or an aggrieved consumer against a debt management service provider for violations of any provision of this chapter or any rule adopted under this chapter, or for unfair, unconscionable or deceptive practices that cause actual damage to a consumer:

(a) When the commissioner has reasonable cause to believe that a person is violating any provision of this chapter, the commissioner, in addition to and without prejudice to the authority provided elsewhere in this chapter, may enter an order requiring the person to stop or to refrain from the violation. The commissioner may sue in any chancery court of the state having jurisdiction and venue to enjoin the person from engaging in or continuing the violation or from doing any act in furtherance of the violation. In such an action, the court may enter an order or judgment awarding a preliminary or permanent injunction;

(b) The commissioner may, after notice and hearing, impose a civil penalty against any licensee if the licensee, individual required to be registered, or employee is adjudged by the commissioner to be in violation of the provisions of this chapter. The civil penalty shall not exceed Five Hundred Dollars ($500.00) per violation and shall be deposited into the Consumer Finance Fund of the department;

(c) The state may enforce its rights under the surety bond as required in Section 81-22-7 as an available remedy for the collection of any civil penalties, criminal fines or costs of investigation and/or prosecution incurred;

(d) A civil action by an aggrieved consumer in which that consumer has the right to recover actual damages from the debt management service provider in an amount determined by the court plus costs of the action together with reasonable attorney's fees; or

(e) Revocation, suspension or nonrenewal of the debt management service provider's license under Section 81-22-25.

SOURCES: Laws, 2003, ch. 465, § 12; reenacted and amended, Laws, 2006, ch. 398, § 12; reenacted without change, Laws, 2010, ch. 396, § 12; reenacted without change, Laws, 2013, ch. 348, § 12; reenacted without change, Laws, 2015, ch. 325, § 12, eff from and after July 1, 2015.

Editor's Note — For repeal of this section, see § 81-22-31.

Amendment Notes — The 2015 amendment reenacted the section without change.

§ 81-22-25. Suspension or revocation of registration [Repealed effective July 1, 2016].

(1) **Suspension or revocation.** — After notice and hearing, the commissioner may suspend or revoke a debt management service provider's license if the commissioner finds that one of the conditions of subsection (2) of this section is met.

(2) **Conditions for suspension or revocation.** — The following conditions are grounds for suspension or revocation of a registration:

(a) A fact or condition exists that, if it had existed at the time when the licensee applied for a license, would have been grounds for denying the application;

(b) The licensee knowingly violates a material provision of this chapter or rule or order validly adopted by the commissioner under authority of this chapter;

(c) The licensee is insolvent;

(d) The licensee refuses to permit the commissioner to make an examination authorized by this chapter; or

(e) The licensee fails to respond within a reasonable time and in an appropriate manner to communications from the commissioner.

SOURCES: Laws, 2003, ch. 465, § 13; reenacted without change, Laws, 2006, ch. 398, § 13; reenacted without change, Laws, 2010, ch. 396, § 13; reenacted without change, Laws, 2013, ch. 348, § 13; reenacted without change, Laws, 2015, ch. 325, § 13, eff from and after July 1, 2015.

Editor's Note — For repeal of this section, see § 81-22-31.
Amendment Notes — The 2015 amendment reenacted the section without change.

§ 81-22-27. Commissioner authorized to hire additional full-time employees [Repealed effective July 1, 2016].

The commissioner may employ the necessary full-time employees above the number of permanent full-time employees authorized for the department for the fiscal year 2003, to carry out and enforce the provisions of this chapter. The commissioner also may expend the necessary funds and equip and provide necessary travel expenses for those employees.

SOURCES: Laws, 2003, ch. 465, § 14; reenacted without change, Laws, 2006, ch. 398, § 14; reenacted without change, Laws, 2010, ch. 396, § 14; reenacted without change, Laws, 2013, ch. 348, § 14; reenacted without change, Laws, 2015, ch. 325, § 14, eff from and after July 1, 2015.

Editor's Note — For repeal of this section, see § 81-22-31.
Amendment Notes — The 2015 amendment reenacted the section without change.

§ 81-22-28. Written notice of intent by licensee to use third-party payment processor; content of notice; surety bond required; examination of third-party payment processor records by department; termination of agreement or contract with third-party payment processor. [Repealed effective July 1, 2016].

(1) If a licensee seeks to utilize a third-party payment processor, to hold, have access to, effectuate possession of, by any means, or to distribute or be in the chain of distribution of the monies of another licensee's consumers, the licensee shall give the Department of Banking and Consumer Finance ten (10) days' written notice.

(2) Such notice shall contain the name and address of the third-party payment processor, a description of the services, a copy of the agreement or contract between the licensee and the third-party payment processor and the highest daily amount of consumer funds to be held or transmitted. The third-party payment processor shall submit to the department, upon request, the highest daily amount held or transmitted during the previous month.

(3) Each third-party payment processor shall file with the commissioner a surety bond, issued by a bonding company or insurance company authorized to do business in the State of Mississippi, in the principal sum of Fifty Thousand Dollars ($50,000.00) and in an additional principal sum of Fifty Thousand Dollars ($50,000.00) for each additional licensee it contracts with, but in no event shall the bond be required to be in excess of One Hundred Fifty Thousand Dollars ($150,000.00). In lieu of the surety bond, a third-party payment processor may file other assets such as cash, a certificate of deposit or government bonds.

(4) A licensee shall not use a third-party payment processor until the licensee receives written notice from the department confirming that the department has received a surety bond or other assets from the third-party payment processor.

(5) Prior to performing any of its services, the third-party payment processor shall provide written authorization for the department to examine all books, records, documents and materials, including those maintained in electronic form, as they relate to the consumers' monies held by, or distributed by the third-party payment processor to the creditors of the consumers and shall have received written confirmation from the department that the written authorization is sufficient. The cost of the examination shall be paid by the licensee.

(6) All agreements or contracts between a licensee and a third-party payment processor shall provide for a thirty-day written notice of termination to the party against whom termination is being sought. A licensee shall immediately notify the department in writing of the notice of termination.

(7) In the event a licensee elects to maintain cash, a certificate of deposit or government bonds on deposit, and utilizes the services of a third-party payment processor, there is no requirement that the third-party payment

processor obtain a surety bond or maintain other assets on deposit with the department.

SOURCES: Laws, 2006, ch. 398, § 15; reenacted without change, Laws, 2010, ch. 396, § 15; reenacted without change, Laws, 2013, ch. 348, § 15; reenacted without change, Laws, 2015, ch. 325, § 15, eff from and after July 1, 2015.

Editor's Note — For repeal of this section, see § 81-22-31.
Amendment Notes — The 2015 amendment reenacted the section without change.

§ 81-22-29. Repealed.

Repealed by Laws of 2006, ch. 398, § 18, effective from and after July 1, 2006.

[Laws, 2003, ch. 465, § 15, eff from and after July 1, 2003.]

Editor's Note — Former § 81-22-29 provided an application deadline for existing nonprofit corporations engaged in the business of debt adjusting.

§ 81-22-31. Repeal of Sections 81-22-1 through 81-22-28.

Sections 81-22-1 through 81-22-28, Mississippi Code of 1972, shall stand repealed on July 1, 2016.

SOURCES: Laws, 2006, ch. 398, § 16; reenacted and amended, Laws, 2010, ch. 396, § 16; Laws, 2013, ch. 348, § 16; Laws, 2015, ch. 325, § 16, eff from and after July 1, 2015.

Amendment Notes — The 2015 amendment extended the repealer provision from "July 1, 2015" to "July 1, 2016."

CHAPTER 23

Interstate Bank Branching

Sec.
81-23-1. Short title.
81-23-3. Intent.
81-23-5. Definitions.
81-23-7. Provisions.
81-23-9. Restrictions.
81-23-11. Filing of application; criteria for approval.
81-23-13. Requirements for out-of-state state banks.
81-23-15. Permissible activities.
81-23-17. Rights of commissioner.
81-23-19. Violation by out-of-state state bank; authority of commissioner to take enforcement action.
81-23-21. Power of commissioner to promulgate regulations.
81-23-23. Change in control requirement for out-of-state state banks.
81-23-25. Application in case of judicial finding of invalidity.

§ 81-23-1. Short title.

This chapter shall be known and may be cited as the "Interstate Bank Branching Act."

SOURCES: Laws, 1996, ch. 441, § 2, eff from and after May 1, 1997.

Cross References — Confidential information under Savings Bank Law, see § 81-14-167.

Companies authorized to act as fiduciaries, see § 81-27-1.101.

§ 81-23-3. Intent.

It is the intent of this chapter to permit interstate bank branching under Section 102 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, Public Law No. 103-328, in accordance with the provisions set forth in this chapter.

SOURCES: Laws, 1996, ch. 441, § 3, eff from and after May 1, 1997.

§ 81-23-5. Definitions.

As used in this chapter, unless a different meaning is required by the context, the following words and phrases shall have the following meanings:

(a) "Bank" means any bank the deposits of which are insured by the Federal Deposit Insurance Corporation or any successor thereto; however, the term "bank" shall not include any "foreign bank" as defined in 12 USCS 3101(7), except that such term includes any bank organized under the laws of a territory of the United States, Puerto Rico, Guam, American Samoa or the Virgin Islands, the deposits of which are insured by the Federal Deposit Insurance Corporation or any successor thereto.

(b) "Bank holding company" has the meaning set forth in 12 USCS 1841(a)(1).

(c) "Bank supervisory agency" means:

(i) Any agency of another state with primary responsibility for chartering and supervising banks; and

(ii) The Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, and any successor to these agencies.

(d) "Branch" means an office of a bank at which such bank accepts deposits. The term "branch" does not include the following:

(i) Automatic teller machines or other unmanned banking facilities at which deposits may be accepted;

(ii) Offices located outside the Untied States; or

(iii) Loan production offices, representative offices or other offices at which deposits are not accepted.

(e) "Commissioner" means the Mississippi Commissioner of Banking and Consumer Finance then in office and, where appropriate, all of his or her successors and predecessors in office.

(f) "Control" shall be construed consistently with the provisions of 12 USCS 1841(a)(2).

(g) "Home state" means:

(i) With respect to a state bank, the state by which the bank is chartered;

(ii) With respect to a national bank, the state in which the main office of the bank is located.

(h) "Home state regulator" means, with respect to an out-of-state state bank, the bank supervisory agency of the state in which such bank is chartered.

(i) "Host state" means a state, other than the home state of a bank, in which the bank maintains, or seeks to establish and maintain a branch.

(j) "Interstate branch" means a branch located in a state other than the home state of its parent.

(k) "Interstate branching transaction" means:

(i) The merger or consolidation of banks with different home states, and the conversion of branches of any bank involved in the merger or consolidation into branches of the resulting bank;

(ii) The purchase of all or substantially all of the assets (including all or substantially all of the branches) of a bank whose home state is different from the home state of the acquiring bank, and converting the acquired assets into branches of the acquiring bank; or

(iii) The purchase of all or substantially all of the assets (including all or substantially all of the branches), of a bank in a state by a bank whose home state is different than the state in which such assets exist, and converting the acquired assets into branches of the acquiring bank, even though:

A. Two (2) or more banks are not merged or consolidated; or

B. All or substantially all of the assets of the bank are not purchased.

(*l*) "Out-of-state bank" means a bank whose home state is a state other than the State of Mississippi.

(m) "Out-of-state state bank" means a bank chartered under the laws of any state other than the State of Mississippi.

(n) "Resulting bank" means a bank that has resulted from an interstate branching transaction under this chapter.

(o) "State" means any state of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

(p) "Mississippi bank" means a bank whose home state is the State of Mississippi.

(q) "Mississippi state bank" means a bank chartered under the laws of the State of Mississippi.

SOURCES: Laws, 1996, ch. 441, § 4, eff from and after May 1, 1997.

ATTORNEY GENERAL OPINIONS

The Legislature clearly intended that out-of-state banks establishing and maintaining one or more branches in Mississippi as authorized by the Interstate Bank Branching Act Of 1996 should be allowed to carry out any activities at such branches as Mississippi state banks do; thus, an out-of-state bank with branches located in Mississippi may qualify as a state depository. Bennet, January 16, 1998, A.G. Op. #97-0842.

§ 81-23-7. Provisions.

(1) In accordance with the provision of this chapter, a Mississippi bank may enter into an interstate branching transaction, or other exercise, the result of which the Mississippi bank, or the resulting Mississippi bank, establishes, maintains or operates one or more branches in a state other than the State of Mississippi.

(2) In accordance with the provisions of this chapter, one or more Mississippi banks may enter into an interstate branching transaction with one or more out-of-state banks, and an out-of-state bank resulting from such transaction may maintain and operate, as branches of the out-of-state bank, the branches in the State of Mississippi of a Mississippi bank that participated in such transaction.

SOURCES: Laws, 1996, ch. 441, § 5, eff from and after May 1, 1997.

ATTORNEY GENERAL OPINIONS

The Legislature clearly intended that out-of-state banks establishing and maintaining one or more branches in Mississippi as authorized by the Interstate Bank Branching Act Of 1996 should be allowed to carry out any activities at such branches as Mississippi state banks do; thus, an out-of-state bank with branches located in Mississippi may qualify as a state depository. Bennet, January 16, 1998, A.G. Op. #97-0842.

§ 81-23-9. Restrictions.

(1) An interstate branching transaction shall not be permitted under this chapter if, upon consummation of such transaction, the resulting bank would control in excess of twenty-five percent (25%) of the total deposits of all offices located in the State of Mississippi of commercial banks, savings banks, savings and loan associations and credit unions in the State of Mississippi, as determined according to Section 81-7-8.

(2) An interstate branching transaction resulting in:

(a) The acquisition by an out-of-state bank of a Mississippi bank,

(b) The acquisition of all or substantially all of the assets (including all or substantially all of the branches) of a Mississippi bank, or

(c) The merger or consolidation of a Mississippi bank with or into another bank shall not be permitted unless such Mississippi bank has been in continuous operation as a state or federally chartered bank, savings bank or savings association for at least its previous five (5) years of existence, as determined according to Section 81-7-8, or is defined as a banker's bank according to Section 81-8-1. However, any state or federally chartered banker's bank that has been merged or consolidated with or into another bank as provided in this subsection shall remain a banker's bank for a period of not less than five (5) years after the date of merger or consolidation.

(3) In the sale of any insolvent bank made pursuant to the provisions of Chapter 9, Title 81, Mississippi Code of 1972, or pursuant to federal banking laws, the restrictions contained in subsections (1) and (2) of this section shall not apply to prevent the acquisition of such insolvent bank by another bank; and, additionally, neither restriction shall apply to prohibit any purchasing bank from retaining any established branches of the insolvent bank which the purchasing bank would otherwise be prohibited from establishing.

SOURCES: Laws, 1996, ch. 441, § 6; Laws, 2000, ch. 325, § 3, eff from and after July 1, 2000.

§ 81-23-11. Filing of application; criteria for approval.

Not later than the date on which the required application is filed with the responsible federal bank supervisory agency, a Mississippi state bank seeking to establish one or more branches in a state other than the State of Mississippi pursuant to an interstate branching transaction, or other exercise, shall file an application on a form prescribed by the commissioner and pay the fee prescribed by the commissioner. The applicant Mississippi state bank shall also comply with any other applicable Mississippi statutes. If the commissioner finds that:

(a) The proposed transaction will not be detrimental to the safety and soundness of the applicant,

(b) Any new officers and directors of the applicant or the resulting bank are qualified by character, experience, and financial responsibility to direct and manage the bank, and

(c) The proposed transaction is consistent with the convenience and needs of the communities to be served by the applicant or the resulting bank in the State of Mississippi and is otherwise in the public interest, the commissioner shall approve the transaction and the operation of branches outside of the State of Mississippi by the applicant or the resulting bank. Such a transaction may be consummated only after the applicant or the resulting bank has received the commissioner's written approval.

SOURCES: Laws, 1996, ch. 441, § 7, eff from and after May 1, 1997.

§ 81-23-13. Requirements for out-of-state state banks.

Any out-of-state state bank that will be the resulting bank pursuant to an interstate branching transaction involving a Mississippi state bank shall notify the commissioner of the proposed transaction not later than the date on which it files an application for an interstate branching transaction with the responsible federal bank supervisory agency, and shall submit a copy of that application to the commissioner and pay the filing fee, if any, required by the commissioner. Any Mississippi bank which is a party to such interstate branching transaction shall comply with all other applicable state and federal laws.

SOURCES: Laws, 1996, ch. 441, § 8, eff from and after May 1, 1997.

§ 81-23-15. Permissible activities.

(1) An out-of-state bank which establishes and maintains one or more branches in the State of Mississippi under this chapter may conduct any activities at such branch or branches that are authorized under the laws of the State of Mississippi for Mississippi state banks.

(2) A Mississippi state bank may conduct any activities at any branch outside the State of Mississippi that are permissible for a bank chartered by the host state where the branch is located.

(3) An out-of-state bank that has established a branch in the State of Mississippi under this chapter may establish or acquire additional branches in the State of Mississippi to the same extent that any Mississippi bank may establish or acquire a branch in the State of Mississippi under applicable federal and state law.

SOURCES: Laws, 1996, ch. 441, § 9, eff from and after May 1, 1997.

ATTORNEY GENERAL OPINIONS

The Legislature clearly intended that out-of-state banks establishing and maintaining one or more branches in Mississippi as authorized by the Interstate Bank

Branching Act Of 1996 should be allowed to carry out any activities at such branches as Mississippi state banks do; thus, an out-of-state bank with branches located in Mississippi may qualify as a state depository. Bennet, January 16, 1998, A.G. Op. #97-0842.

§ 81-23-17. Rights of commissioner.

(1) To the extent consistent with subsection (3) of this section, the commissioner may make such examinations of any branch established and maintained in the State of Mississippi pursuant to this chapter by an out-of-state state bank as the commissioner may deem necessary to determine whether the branch is being operated in compliance with the laws of the State of Mississippi and in accordance with safe and sound banking practices. The provisions of any applicable Mississippi laws shall apply to such examinations.

(2) The commissioner may prescribe requirements for periodic reports regarding any out-of-state state bank that operates a branch in the State of Mississippi pursuant to this chapter. Any reporting requirements prescribed by the commissioner under this subsection (2) shall be:

(a) Consistent with the reporting requirements applicable to Mississippi state banks, and

(b) Appropriate for the purpose of enabling the commissioner to carry out his or her responsibilities under this chapter.

(3) The commissioner may enter into cooperative, coordinating and information-sharing agreements with any other bank supervisory agencies or any organization affiliated with or representing one or more bank supervisory agencies with respect to the periodic examination or other supervision of any branch in the State of Mississippi of an out-of-state state bank, or any branch of a Mississippi state bank in any host state, and the commissioner may accept such parties' reports of examination and reports of investigation in lieu of conducting his or her own examinations or investigations.

(4) The commissioner may enter into contracts with any bank supervisory agency that has concurrent jurisdiction over a Mississippi state bank or an out-of-state state bank operating a branch in the State of Mississippi pursuant to this chapter to engage the services of such agency's examiners at a reasonable rate of compensation, or to provide the services of the commissioner's examiners to such agency at a reasonable rate of compensation. Such contracts shall be in accordance with the policies and administrative procedures of the Mississippi State Personnel Board.

(5) The commissioner may enter into joint examinations or joint enforcement actions with other bank supervisory agencies having concurrent jurisdiction over any branch in the State of Mississippi of an out-of-state state bank or any branch of a Mississippi state bank in any host state; however, the commissioner may at any time take such actions independently if the commissioner deems such actions to be necessary or appropriate to carry out his or her responsibilities under this chapter or to ensure compliance with the laws of the State of Mississippi; but in the case of an out-of-state state bank, the commissioner shall recognize the exclusive authority of the home state

regulator over corporate governance matters and the primary responsibility of the home state regulator with respect to safety and soundness matters.

(6) Each out-of-state state bank that maintains one or more branches in the State of Mississippi may be assessed and, if assessed, shall pay supervisory and examination fees in accordance with the laws of the State of Mississippi and regulations of the commissioner. Such fees may be shared with other bank supervisory agencies or any organization affiliated with or representing one or more bank supervisory agencies in accordance with agreements between such parties and the commissioner.

SOURCES: Laws, 1996, ch. 441, § 10, eff from and after May 1, 1997.

Cross References — Out-of-state trust institution examinations, see § 81-27-2.301.

§ 81-23-19. Violation by out-of-state state bank; authority of commissioner to take enforcement action.

If the commissioner determines that a branch maintained by an out-of-state state bank in the State of Mississippi is being operated in violation of any provision of the laws of the State of Mississippi, or that such branch is being operated in an unsafe and unsound manner, the commissioner shall have the authority to take all such enforcement actions as he or she would be empowered to take if the branch were a Mississippi state bank; however, the commissioner shall promptly give notice to the home state regulator of each enforcement action taken against an out-of-state state bank and, to the extent practicable, shall consult and cooperate with the home state regulator in pursuing and resolving the enforcement action.

SOURCES: Laws, 1996, ch. 441, § 11, eff from and after May 1, 1997.

§ 81-23-21. Power of commissioner to promulgate regulations.

The commissioner may promulgate such regulations as he or she determines to be necessary or appropriate in order to implement the provisions of this chapter.

SOURCES: Laws, 1996, ch. 441, § 12, eff from and after May 1, 1997.

§ 81-23-23. Change in control requirement for out-of-state state banks.

Each out-of-state state bank that has established and maintains a branch in the State of Mississippi pursuant to this chapter, shall give at least thirty (30) days' prior written notice (or, in the case of an emergency transaction, such shorter notice as is consistent with applicable state or federal law) to the commissioner of any merger, consolidation, or other transaction that would cause a change of control with respect to such bank or any bank holding company that controls such bank, with the result that an application would be required to be filed pursuant to the federal Change in Bank Control Act of 1978, as amended, 12 USCS 1817(j), or the federal Bank Holding Company Act of 1956, as amended, 12 USCS 1841 et seq., or any successor statutes thereto.

SOURCES: Laws, 1996, ch. 441, § 13, eff from and after May 1, 1997.

§ 81-23-25. Application in case of judicial finding of invalidity.

If any provision of this chapter or the application of such provision is found by any court of competent jurisdiction in the United States to be invalid as to any bank, bank holding company, foreign bank or other person or circumstances, or to be superseded by federal law, the remaining provisions hereof shall not be affected and shall continue to apply to any bank, bank holding company, foreign bank, or other person or circumstance.

SOURCES: Laws, 1996, ch. 441, § 14, eff from and after May 1, 1997.

CHAPTER 25

The Mississippi International Banking Act

Article 1. General 81-25-1
Article 3. Domestic Banks Owned or Controlled by Foreign Banks and Other Foreign Persons 81-25-51
Article 5. Direct Offices of Foreign Banks 81-25-101
Article 7. Mississippi Branches of Out-of-State Foreign Banks 81-25-201

ARTICLE 1.

GENERAL.

SEC.
81-25-1. Short title; intention.
81-25-3. Definitions.
81-25-5. Authority of commissioner to issue rules, regulations and orders.
81-25-7. Application in case of judicial finding of invalidity.

§ 81-25-1. Short title; intention.

(1) This chapter shall be known and may be cited as the "Mississippi International Banking Act."

(2) This chapter is intended generally to provide for state regulation of the participation by foreign banks in the financial markets of the State of Mississippi.

(3) Consistent with the federal International Banking Act, the Bank Holding Company Act, the Federal Deposit Insurance Act, and the Interstate Banking and Branching Efficiency Act, this chapter is intended specifically:

(a) To authorize direct offices of foreign banks in the State of Mississippi in the form of branches, agency offices and representative offices;

(b) To authorize branch and agency banking activities and operations, under Mississippi licenses issued by the commissioner, in the State of Mississippi of foreign banks, generally under terms and conditions not less favorable than the terms and conditions under which such activities and operations may be conducted by federal branch or agency offices of foreign banks in the United States, and to set forth a statutory framework for the licensing, regulation and supervision of such state-licensed offices of foreign banks by the Commissioner to assure the safe and sound operation of such offices that are licensed under the laws of the State of Mississippi;

(c) To authorize representative offices in the State of Mississippi of foreign banks, and to set forth statutory provisions governing the licensing and supervision of such offices by the commissioner; and

(d) To ensure that the banking laws and regulations of the State of Mississippi otherwise apply to foreign banks, and to Mississippi and out-of-state banks and bank holding companies that are owned or controlled by foreign banks, in a manner consistent with the laws and policies of the United States governing the operations in this country of foreign banks.

SOURCES: Laws, 1996, ch. 441, § 18, eff from and after May 1, 1997.

Federal Aspects — Federal Deposit Insurance Act, see 12 USCS §§ 1811 et seq.
Bank Holding Company Act, see 12 USCS §§ 1841 et seq.
International Banking Act, see 12 USCS §§ 3101 et seq.
Interstate Banking and Branching Efficiency Act, see Public Law 103-328, codified at various sections of Title 12, United States Code Service.

§ 81-25-3. Definitions.

For purposes of this chapter:

(a) "Bank" or "insured depository institution" means any bank the deposits of which are insured by the Federal Deposit Insurance Corporation, as provided in Section 2(c) of the Bank Holding Company Act (12 USCS 1841(c) or Section 3(a)(1) of the Federal Deposit Insurance Act (12 USCS 1813(a)(1)), other than a branch of a foreign bank. The term "bank" as used in this chapter shall not in any event include a foreign bank or a branch or agency of a foreign bank.

(b) "Foreign bank" means any company organized under the laws of a foreign country, a territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands, that engages directly in the business of banking, and the deposits of which are not insured by the Federal Deposit Insurance Corporation or any successor thereto. The term includes foreign commercial banks, foreign merchant banks and other foreign institutions that engage in banking activities usual in connection with the business of banking in the countries where such foreign institutions are organized or operating.

(c) "Out-of-state bank" means a bank, the home state of which is a state other than the State of Mississippi.

(d) "Out-of-state foreign bank" means a foreign bank, the home state of which is a state other than the State of Mississippi.

(e) "Mississippi state bank" means a bank organized under the laws of the State of Mississippi.

(f) "Mississippi national bank" means a national banking association having its headquarters within the State of Mississippi.

(g) "Mississippi bank" means a Mississippi state bank or a Mississippi national bank.

(h) "Bank holding company," "subsidiary," and "affiliate" have the same meaning as set forth in Section 2 of the Bank Holding Company Act (12 USCS 1841), and the term "control" shall be construed consistently with the provisions of Section 2(a)(2) of the Bank Holding Company Act (12 USCS 1841(a)(2)).

(i) "Out-of-state bank holding company" means a bank holding company, the home state of which is a state other than the State of Mississippi.

(j) "State" has the same meaning as is set forth in Section 3(a)(3) of the Federal Deposit Insurance Act (12 USCS 1813(a)(3)).

(k) "Home state" has the same meaning in reference to national banks, state banks, and bank holding companies as is set forth in Section 44(f)(4) of the Federal Deposit Insurance Act (12 USCS 1831(u)), and the same meaning in reference to foreign banks as is set forth in Section 5(c) of the federal International Banking Act (12 USCS 3103(c)).

(*l*) "Foreign person" means a natural or juridical person who is a citizen or national of one or more countries (including any colonies, dependencies, or possessions of such countries) other than the United States.

(m) "Direct office" means a branch, agency office or representative office of a foreign bank.

(n) "Branch," when used in reference to an office of a foreign bank, means any office or place of business of a foreign bank at which deposits are received, as provided in Section 1(b)(3) of the federal International Banking Act (12 USCS 3101(3)), and when used in reference to an office of a bank as defined in this section, shall have the same meaning as is set forth in Section 3(o) of the Federal Deposit Insurance Act (12 USCS 1813(o)).

(o) "Interstate branch" means a branch of a bank or a branch of a foreign bank, as the context may require, which is (or is to be) established after September 29, 1994, pursuant to the authority contained in the Interstate Banking and Branching Efficiency Act, outside the home state of the bank or foreign bank. The term shall not include any branch of a corporation organized pursuant to 12 USCS 611, for the purpose of engaging in banking outside of the United States.

(p) "Agency," when used in reference to an office of a foreign bank, means any office or place of business of a foreign bank located in any state of the United States at which:

(i) Credit balances may be maintained incidental to or arising out of the exercise of banking powers,

(ii) Checks may be paid,

(iii) Money may be lent, and

(iv) Deposits are not accepted from citizens or residents of the United States, as provided in Section 1(b)(1) of the federal International Banking Act (12 USCS 3101(1)).

(q) "Federal branch" means a branch of a foreign bank that is licensed by the Comptroller of the Currency pursuant to the provisions of Section 4 of the federal International Banking Act (12 USCS 3102).

(r) "Federal agency" means an agency of a foreign bank that is licensed by the Comptroller of the Currency pursuant to the provisions of Section 4 of the federal International Banking Act (12 USCS 3102).

(s) "Mississippi state branch," when used in reference to an office of a foreign bank, means a branch of a foreign bank that is located in the State of Mississippi and licensed pursuant to the provisions of Article 5 of this chapter.

(t) "Mississippi state agency," when used in reference to an office of a foreign bank, means an agency of a foreign bank that is located in the State of Mississippi and licensed pursuant to the provisions of Article 5 of this chapter.

(u) "Representative office" means any office of a foreign bank which is located in any state and which is not a federal branch or agency, state branch or agency, or subsidiary of a foreign bank, as provided in Section 1(b)(15) of the federal International Banking Act (12 USCS 3101(15)), and the term "Mississippi representative office" means any such office that is located in the State of Mississippi.

(v) The term "United States," when used in a geographical sense, means the several states, the District of Columbia, Puerto Rico, Guam, American Samoa, the American Virgin Islands, the Trust Territory of the Pacific Islands, and any other territory of the United States; and, when used in a political sense, means the federal government of the United States.

(w) "Bank Holding Company Act" means the federal Bank Holding Company Act of 1956, as amended (12 USCS 1841 et seq).

(x) "Federal Deposit Insurance Act" means the Federal Deposit Insurance Act, as amended (12 USCS 1813 et seq).

(y) "Federal International Banking Act" means the federal International Banking Act of 1978, as amended (12 USCS 3101 et seq).

(z) "Interstate Banking and Branching Efficiency Act" means the federal Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, Public Law No. 103-328, 108 Stat. 2338-2381 (September 29, 1994)(codified at various sections of Title 12, United States Code Service).

(aa) "Commissioner" means the Mississippi Commissioner of Banking and Consumer Finance then in office and, where appropriate, all of his or her successors and predecessors in office.

(bb) "Bank supervisory agency" means:

(i) The Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, and any successor to these agencies;

(ii) Any agency of another state with primary responsibility for chartering and supervising banks; and

(iii) Any agency of a country (including any colonies, dependencies, possessions, or political subdivisions thereof) other than the United States.

SOURCES: Laws, 1996, ch. 441, § 19, eff from and after May 1, 1997.

§ 81-25-5. Authority of commissioner to issue rules, regulations and orders.

The commissioner is authorized and empowered to issue such rules, regulations and orders as the commissioner may deem necessary in order to perform his or her duties and functions under this chapter and to administer and carry out the provisions and purposes of this chapter and to prevent evasions thereof.

SOURCES: Laws, 1996, ch. 441, § 20, eff from and after May 1, 1997.

§ 81-25-7. Application in case of judicial finding of invalidity.

If any provision of this chapter or the application of such provision is found by any court of competent jurisdiction in the United States to be invalid as to any bank, bank holding company, foreign bank, or other person or circumstances, or to be superseded by federal law, the remaining provisions hereof shall not be affected and shall continue to apply to any bank, bank holding company, foreign bank, or other person or circumstances.

SOURCES: Laws, 1996, ch. 441, § 21, eff from and after May 1, 1997.

ARTICLE 3.

DOMESTIC BANKS OWNED OR CONTROLLED BY FOREIGN BANKS AND OTHER FOREIGN PERSONS.

SEC.
81-25-51. Intention.
81-25-53. Prohibition against discrimination.

§ 81-25-51. Intention.

This article is generally intended to ensure that the laws and regulations of the State of Mississippi applicable to the ownership and operations of Mississippi banks, and interstate branches in this state of out-of-state banks, do not discriminate against such banks that are owned or controlled by foreign banks or other foreign persons in a manner inconsistent with the provisions of Section 3(d) of the Bank Holding Company Act (12 USCS 1842(d)), as amended effective September 29, 1995, by Section 101 of the Interstate Banking and Branching Efficiency Act, or with other laws and policies of the United States.

SOURCES: Laws, 1996, ch. 441, § 22, eff from and after May 1, 1997.

§ 81-25-53. Prohibition against discrimination.

(1) Except as provided in subsection (2) of this section:

(a) The laws and regulations of the State of Mississippi governing the acquisition or ownership of controlling or other interests in Mississippi banks or in out-of-state banks seeking to establish and maintain one or more interstate branches in the State of Mississippi shall not generally prohibit ownership of such institutions by, or otherwise discriminate against, foreign banks or other foreign persons, notwithstanding any provision of the laws or regulations of the State of Mississippi to the contrary;

(b) The laws and regulations of the State of Mississippi governing the powers and activities of Mississippi banks and of out-of-state banks maintaining one or more interstate branches in the State of Mississippi shall not discriminate among such banks on the basis of their ownership or control by foreign banks or other foreign persons, notwithstanding any provision of the laws or regulations of the State of Mississippi to the contrary.

(2) Notwithstanding the provisions of subsection (1), the commissioner is authorized to apply any standards or requirements of the laws and regulations of the State of Mississippi governing the ownership, control or operations of Mississippi banks, even if applicable specifically or exclusively to foreign banks or other foreign persons, to the extent such standards or requirements are determined by regulation or order of the commissioner to be either:

(a) Substantially equivalent to or consistent with the standards or requirements governing the ownership, control or operations of Mississippi banks by foreign banks or other foreign persons under applicable U.S. federal laws or regulations, or

(b) otherwise consistent with the laws and policies of the United States, including its international agreements governing financial services.

SOURCES: Laws, 1996, ch. 441, § 23, eff from and after May 1, 1997.

ARTICLE 5.

DIRECT OFFICES OF FOREIGN BANKS.

SEC.

81-25-101. Intention.
81-25-103. Prohibited transactions.
81-25-105. Application to procure a license.
81-25-107. Application procedures.
81-25-109. Application fee.
81-25-111. License prohibitions.
81-25-113. Regulation of operations.
81-25-115. Certificate of authority.
81-25-117. Permissible and prohibited activities.
81-25-119. Establishment and maintenance of a Mississippi state representative office.
81-25-121. Application for a license to establish and maintain a Mississippi representative office.
81-25-123. Application procedures.
81-25-125. Permissible activities.
81-25-127. Revocation of license.
81-25-129. Posting of license.
81-25-131. License transfer restriction.
81-25-133. Filing of instrument to appoint commissioner as agent, representative and attorney.
81-25-135. Service of processes, notices and demands.
81-25-137. Filing of amendments to articles of incorporation.
81-25-139. Amendment to license.
81-25-141. Notice of acquisition or merger.
81-25-143. Notice of relocation.
81-25-145. Examination by commissioner.
81-25-147. Power and authority of commissioner.
81-25-149. Filing of reports with commissioner.
81-25-151. All reports subject to subpoena and public access.
81-25-153. Records to be kept and made available upon request by commissioner.
81-25-155. Separation of assets.
81-25-157. Requirement to give notice that deposits and credit balances are not insured by the Federal Deposit Insurance Corporation.

81-25-159. Limitations.
81-25-161. Required securities.
81-25-163. Ratio of assets to liabilities.
81-25-165. Closing of office.
81-25-167. Suspension or revocation of license.
81-25-169. Authority of of commissioner to suspend or revoke license.
81-25-171. Authority of commissioner to seize property.

§ 81-25-101. Intention.

Consistent with the federal International Banking Act, the Bank Holding Company Act, the Federal Deposit Insurance Act, and the Interstate Banking and Branching Efficiency Act, this article is intended:

(a) To authorize banking activities and operations, under Mississippi licenses issued by the commissioner, of branch and agency offices in the State of Mississippi of foreign banks, generally under terms and conditions not less favorable than the terms and conditions under which such activities and operations may be conducted by federal branch or agency offices of foreign banks in the United States, and to set forth a statutory framework for the licensing, regulation and supervision of such Mississippi-licensed offices of foreign banks by the commissioner to assure the safe and sound operation of such offices that are licensed under the laws of the State of Mississippi; and

(b) To authorize representative offices in the State of Mississippi of foreign banks, and to set forth statutory provisions governing the licensing and supervision of such offices by the commissioner.

SOURCES: Laws, 1996, ch. 441, § 24, eff from and after May 1, 1997.

§ 81-25-103. Prohibited transactions.

(1) No foreign bank shall transact business in the State of Mississippi except at a Mississippi state branch or Mississippi state agency which it is licensed to establish and maintain pursuant to, and at which it conducts such activities as are permitted by, this chapter.

(2) Subsection (1) shall not be deemed to prohibit:

(a) Any foreign bank which establishes and maintains a federal agency or federal branch in the State of Mississippi from transacting at such federal agency or federal branch such business as it may be authorized to transact under applicable federal laws and regulations or from exercising any right otherwise extended to it under applicable federal law or regulation;

(b) Any foreign bank which does not maintain a Mississippi state branch or Mississippi state agency from making in the State of Mississippi loans secured by liens on real or personal property located in the State of Mississippi or enforcing such loans in the State of Mississippi;

(c) Any foreign bank which does not maintain a Mississippi branch from transacting trust business in the State of Mississippi as long as the trust business is not conducted from an office or location in the State of Mississippi and is otherwise authorized by law;

(d) Any foreign bank which maintains a Mississippi branch or agency from transacting business as agent for an affiliated depository or other institution in accordance with provisions of this chapter; or

(e) Any foreign bank organized under the laws of a territory of the United States, Puerto Rico, Guam, American Samoa or the Virgin Islands, the deposits of which are insured by the Federal Deposit Insurance Corporation, from establishing and operating an interstate branch in the State of Mississippi in its capacity as a "state bank" as defined in the Federal Deposit Insurance Act, pursuant to the authorities contained in that act and in the laws of the State of Mississippi.

(3) For purposes of subsection (1), no foreign bank shall be deemed to be transacting business in the State of Mississippi merely because a subsidiary or affiliate transacts business in the State of Mississippi, including business that any depository institution subsidiary or affiliate may lawfully conduct in the State of Mississippi as an agent for the foreign bank in accordance with and to the extent authorized by the laws of the State of Mississippi and applicable regulations or orders of the commissioner.

SOURCES: Laws, 1996, ch. 441, § 25, eff from and after May 1, 1997.

§ 81-25-105. Application to procure a license.

A foreign bank, in order to procure a license under this chapter to establish and maintain a Mississippi state branch or Mississippi state agency shall submit an application to the commissioner. Such application shall contain:

(a) The same information as required by the Board of Governors of the Federal Reserve System for an application to establish a branch or agency, as the case may be, in the United States;

(b) An instrument irrevocably appointing the commissioner or his or her successors in office to be such foreign bank's agent, representative and attorney to receive service of any lawful judicial and administrative process in accordance with this chapter; and

(c) Such additional information as the commissioner may require by regulation or order.

SOURCES: Laws, 1996, ch. 441, § 26, eff from and after May 1, 1997.

§ 81-25-107. Application procedures.

(1) A foreign bank making an application under this chapter for a license to establish and maintain a Mississippi state branch or Mississippi state agency shall deliver to the commissioner:

(a) At least two (2) (or more as the commissioner may require by regulation) duplicate originals of the foreign bank's application; and

(b) At least two (2) (or more as the commissioner may require by regulation) copies of its charter or articles of incorporation and all amendments thereto, duly authenticated by the proper officer of the country of such foreign bank's organization.

(2) The commissioner shall issue a license to a foreign bank to establish and maintain a Mississippi state branch or Mississippi state agency if he or she finds that:

(a) The foreign bank is of good character and sound financial standing;

(b) The management of the foreign bank and the proposed management of the Mississippi state branch or Mississippi state agency are adequate;

(c) The convenience and needs of persons to be served by the proposed Mississippi state branch or Mississippi state agency will be promoted; and

(d) The foreign bank satisfies such other standards as the commissioner may establish by regulation.

(3) If the commissioner determines to issue a license to a foreign bank to establish and maintain a Mississippi state branch or Mississippi state agency, he or she shall, when all fees have been paid as required under this chapter:

(a) Endorse on each document filed as part of the application the word "Filed," and the date of the filing thereof and return to the foreign bank a copy of each document so endorsed;

(b) File in his or her office one (1) of such duplicate originals of the application and copies of the charter or articles of incorporation and amendments thereto; and

(c) Issue a license to establish and maintain a Mississippi state branch or Mississippi state agency to such foreign bank.

(4) Each license issued to a foreign bank to establish and maintain a Mississippi state branch or Mississippi state agency shall state fully the name of the foreign bank to which such license is issued, and all such other information as the commissioner may require by regulation or order.

(5) The commissioner may, by regulation or order, prescribe abbreviated application procedures and standards applicable to applications by foreign banks that have already established an initial Mississippi state branch or agency, subsequently to establish additional intrastate Mississippi state branches or agencies, as the case may be.

SOURCES: Laws, 1996, ch. 441, § 27, eff from and after May 1, 1997.

§ 81-25-109. Application fee.

Upon applying to the commissioner under this chapter for a license to establish and maintain a Mississippi state branch or state agency, a foreign bank shall pay to the commissioner an application fee in such amount and in such manner as the commissioner shall require by regulation.

SOURCES: Laws, 1996, ch. 441, § 28, eff from and after May 1, 1997.

§ 81-25-111. License prohibitions.

(1) No foreign bank which is licensed under this chapter to establish and maintain a Mississippi state branch or Mississippi state agency shall concurrently maintain a federal branch or federal agency in the State of Mississippi.

(2) No foreign bank which maintains a federal branch or federal agency in the State of Mississippi shall concurrently be licensed under this chapter to maintain a Mississippi state branch or Mississippi state agency.

SOURCES: Laws, 1996, ch. 441, § 29, eff from and after May 1, 1997.

§ 81-25-113. Regulation of operations.

(1) Except as otherwise specifically provided in this article or in regulations or orders adopted by the commissioner, and notwithstanding any other law or regulation of the State of Mississippi to the contrary, operations of a foreign bank at a Mississippi state branch or Mississippi state agency shall be conducted with the same rights, privileges and powers as a Mississippi state bank at the same location and shall be subject to all the same duties, restrictions, penalties, liabilities, conditions, and limitations that would apply under the laws of the State of Mississippi to a Mississippi state bank doing business at the same location; provided, however, that fiduciary activities shall only be conducted from a branch office.

(2) Among other exceptions to the provisions of subsection (1) that may be required or authorized by the commissioner pursuant to the provisions of this article:

(a) A Mississippi state branch that was not grandfathered as an "insured branch" within the meaning of Section 6(c)(2) of the federal International Banking Act (12 USCS 3104(c)(2)) may not accept, from citizens or residents of the United States, deposits (other than credit balances that are incidental to or arise out of its exercise of other lawful banking powers) of less than One Hundred Thousand Dollars ($100,000.00), except to the extent that such deposits are determined by the Federal Deposit Insurance Corporation not to constitute "domestic retail deposit activities requiring deposit insurance protection" within the meaning of Section 6 of the federal International Banking Act (12 USCS 3104);

(b) A Mississippi state agency may not accept any deposits from citizens or residents of the United States (other than credit balances that are incidental to or arise out of its exercise of other lawful banking powers), but it may accept deposits from persons who are neither citizens nor residents of the United States;

(c) A Mississippi state branch or Mississippi state agency shall not be required to maintain federal or state deposit insurance under any law, regulation, or order of the State of Mississippi that requires Mississippi state banks and other depository institutions to maintain such deposit insurance, and the commissioner may, by regulation or order, exclude or exempt uninsured Mississippi state branches and/or Mississippi agencies from, or otherwise modify the applicability to uninsured Mississippi state branches and/or Mississippi agencies of, any law or regulation of the State of Mississippi that is generally applicable to insured Mississippi state banks, or that would otherwise be applicable to an insured Mississippi state bank doing business at the same location, as the commissioner may deem necessary or desirable, taking into account applicable limitations on the retail deposit-taking powers and privileges of Mississippi state branches and Mississippi agencies;

(d) Any limitation or restriction based on the capital stock and surplus of a Mississippi state bank shall be deemed to refer, as applied to a Mississippi state branch or Mississippi state agency, to the dollar equivalent of the capital stock and surplus of the foreign bank, and if the foreign bank has more than one Mississippi state branch or Mississippi state agency in this State, the business transacted by all such state branches and Mississippi state agencies shall be aggregated in determining compliance with the limitation; and

(e) The commissioner is expressly authorized to adopt such additional or modify the applicability of any existing standards, conditions or requirements, by regulation or order, as he or she may deem necessary to ensure the safety and soundness and the protection of creditors of the operations of branches and agencies of foreign banks in the State of Mississippi.

SOURCES: Laws, 1996, ch. 441, § 30, eff from and after May 1, 1997.

§ 81-25-115. Certificate of authority.

(1) No foreign bank which is licensed to establish and maintain a Mississippi state branch shall engage in fiduciary activities at such branch office unless such foreign bank shall have first obtained a certificate of authority from the commissioner to engage in fiduciary activities at such office.

(2) An application to obtain a certificate of authority to engage in fiduciary activities shall be in such form and contain such information, and be accompanied by such reasonable fee, as the commissioner may require by regulation. The commissioner shall issue a certificate of authority to engage in fiduciary activities to a foreign bank making an application under this section if he or she finds that such foreign bank will exercise fiduciary powers in accordance with the laws and regulations of the State of Mississippi.

(3) A foreign bank which holds a certificate of authority issued under this section may engage at its Mississippi state branch or Mississippi state agency in fiduciary activities to the same extent and in the same manner as if such foreign bank were a Mississippi state bank.

(4) A foreign bank which holds a certificate of authority issued under this section shall file all such reports, pay all such reasonable fees, and be subject to examination and supervision as the commissioner may determine by regulation.

(5) The commissioner may suspend or revoke a certificate to engage in fiduciary activities issued under this section if he or she finds:

(a) That conditions exist which would authorize the commissioner under this chapter to revoke or suspend such foreign bank's license to establish and maintain a Mississippi state branch; or

(b) Any fact or condition exists which, if it had existed at the time of the foreign bank's original application to obtain a certificate of authority to engage in fiduciary activities, would have resulted in the commissioner refusing to issue such certificate of authority to the foreign bank.

(6) Fiduciary activities shall not be permitted at agency or representative offices.

SOURCES: Laws, 1996, ch. 441, § 31, eff from and after May 1, 1997.

§ 81-25-117. Permissible and prohibited activities.

(1) A Mississippi state branch or Mississippi state agency of a foreign bank licensed under this chapter may receive deposits, renew time deposits, close loans, service loans, and receive payments on loans and other obligations as an agent for any depository institution affiliate of such foreign bank, including branch, agency and other offices of the same foreign bank located in other states, generally in accordance with the same terms, conditions, procedures and requirements that are applicable under the laws and regulations of Mississippi to such agency activities that may be conducted by Mississippi state banks.

(2) Notwithstanding any other provision of the laws or regulations of the State of Mississippi, a Mississippi state branch or Mississippi state agency of a foreign bank acting in the State of Mississippi as an agent in accordance with the provisions of this section shall not be considered to be a branch of such other depository institution affiliate; however, no Mississippi state branch or Mississippi agency shall be authorized by this section to act as agent for a branch or agency of an affiliated foreign bank other than the foreign bank which has been licensed to transact business in the State of Mississippi pursuant to this chapter.

(3) A Mississippi state branch or Mississippi state agency of a foreign bank licensed under this chapter may not:

(a) Conduct any activity as an agent under this section which such office is prohibited from conducting as a principal under any applicable federal or state law, including but not limited to the acceptance of impermissible deposits; or

(b) As a principal, have an agent conduct any activity under this section which such office is prohibited from conducting under any applicable federal or state law, including but not limited to the acceptance of impermissible deposits.

(4) An agency relationship between a Mississippi state branch or Mississippi state agency of a foreign bank licensed under this chapter and a depository institution affiliate or other affiliate of such foreign bank shall in any event be on terms that are consistent with safe and sound banking practices and all applicable regulations and orders of the commissioner.

SOURCES: Laws, 1996, ch. 441, § 32, eff from and after May 1, 1997.

§ 81-25-119. Establishment and maintenance of a Mississippi state representative office.

(1) No foreign bank shall establish or maintain a Mississippi state representative office unless such foreign bank is licensed by the commissioner to maintain such a Mississippi representative office.

(2) Nothing in subsection (1) shall be deemed to prohibit a foreign bank which maintains a federal agency or federal branch in the State of Mississippi from establishing or maintaining one or more Mississippi representative offices.

SOURCES: Laws, 1996, ch. 441, § 33, eff from and after May 1, 1997.

§ 81-25-121. Application for a license to establish and maintain a Mississippi representative office.

(1) The application for a license to establish and maintain a Mississippi representative office shall be in writing under oath and shall be in such form and contain such information as the commissioner may require by regulation or order. The application shall be accompanied by a reasonable fee as the commissioner may establish by regulation.

(2) Each application to establish and maintain a Mississippi representative office shall include an instrument irrevocably appointing the commissioner or his or her successors in office to be such foreign bank's agent, representative and attorney to receive service of any lawful judicial and administrative process in accordance with Section 81-25-101.

SOURCES: Laws, 1996, ch. 441, § 34, eff from and after May 1, 1997.

§ 81-25-123. Application procedures.

(1) A foreign bank making an application for a license to establish and maintain a Mississippi representative office shall deliver to the commissioner two (2) (or more as the commissioner may require by regulation) duplicate originals of the foreign bank's application.

(2) The commissioner shall issue a license to a foreign bank to establish and maintain a Mississippi representative office if he or she finds that:

(a) The foreign bank is of good character and sound financial standing;

(b) The management of the foreign banks and the proposed management of the Mississippi representative office are adequate; and

(c) The convenience and needs of persons to be served by the proposed Mississippi representative office will be promoted.

(3) If the commissioner determines to issue a license to a foreign bank to establish and maintain a Mississippi representative office, he or she shall, when all fees have been paid as required under this chapter:

(a) Endorse on each duplicate original of the application the word "Filed," and the date of the filing thereof and return to the foreign bank one (1) such duplicate original so endorsed;

(b) File in his or her office one (1) of such duplicate originals of the application; and

(c) Issue a license to establish and maintain a Mississippi representative office to such foreign bank.

(4) Each license issued to a foreign bank to establish and maintain a Mississippi representative office shall state fully the name of the foreign bank to which such license is issued, the address or addresses at which such Mississippi representative office is to be located and all such other information as the commissioner may require by regulation.

SOURCES: Laws, 1996, ch. 441, § 35, eff from and after May 1, 1997.

§ 81-25-125. Permissible activities.

(1) A foreign bank which is licensed to establish and maintain a Mississippi representative office may, subject to such regulations as the commissioner may prescribe, engage in the following activities:

(a) Solicitation for loans and in connection therewith the assembly of credit information, making of property inspections and appraisals, securing of title information, preparation of applications for loans including making recommendations with respect to action thereon, solicitation of investors to purchase loans from the foreign bank, and the search for such investors to contract with the foreign bank for servicing of such loans;

(b) The solicitation of new business;

(c) The conduct of research; and

(d) Back office administrative functions as may be more specifically defined in regulations issued by the commissioner.

Any other activity which the foreign bank seeks to conduct at such office shall be subject to the prior written approval of the commissioner by general regulation or upon application in such form as the commissioner shall require by regulation or order.

(2) Notwithstanding subsection (1), a Mississippi representative office that is a regional administrative office of the foreign bank, as may be defined more fully by the commissioner in regulations and orders, may engage in credit approval activities if the foreign bank (a) gives forty-five (45) days prior written notice to the commissioner; and (b) the commissioner does not object within such forty-five (45) day period to the conduct of such activities by the Mississippi representative office. Written notice under this subsection shall be in such a form and contain such information as the commissioner shall require by regulation or order.

SOURCES: Laws, 1996, ch. 441, § 36, eff from and after May 1, 1997.

§ 81-25-127. Revocation of license.

The commissioner, after notice and opportunity for a hearing, may revoke a license to establish and maintain a Mississippi representative office if he or she finds:

(a) The foreign bank has violated any provision of this chapter or any other law, rule or regulation of the State of Mississippi; or

(b) Any fact or condition exists which, if it had existed at the time of the foreign bank's original application for such license, would have resulted in the commissioner refusing to issue such license to the foreign bank.

SOURCES: Laws, 1996, ch. 441, § 37, eff from and after May 1, 1997.

§ 81-25-129. Posting of license.

Each foreign bank which is licensed to establish and maintain a Mississippi state branch, Mississippi state agency or Mississippi representative office shall post its license in a conspicuous place at such office.

SOURCES: Laws, 1996, ch. 441, § 38, eff from and after May 1, 1997.

§ 81-25-131. License transfer restriction.

No license issued by the commissioner in accordance with this chapter shall be transferable or assignable.

SOURCES: Laws, 1996, ch. 441, § 39, eff from and after May 1, 1997.

§ 81-25-133. Filing of instrument to appoint commissioner as agent, representative and attorney.

(1) A foreign bank which is licensed to establish and maintain a Mississippi state branch, Mississippi state agency, or Mississippi representative office shall file with the commissioner an instrument irrevocably appointing the commissioner and his or her successors in office to be such foreign bank's agent, representative and attorney to receive service of any lawful process in any judicial or administrative proceeding against the foreign bank or any of its successors which arises out of the foreign bank's activities in the State of Mississippi after such appointment has been filed, with the same force and validity as if served directly on the foreign bank or its successor, as the case may be. Such appointment shall be in such form and contain such information as the commissioner may require by regulation or order.

(2) Any foreign bank which establishes a Mississippi state branch, Mississippi state agency or Mississippi representative office and which has not filed with the commissioner an instrument pursuant to subsection (1) of this section shall be deemed by the establishment of such office to have appointed the commissioner as its agent, representative and attorney to receive service of any lawful process in any judicial or administrative proceeding against the foreign bank or any of its successors which arises out of the foreign bank's activities in the State of Mississippi, with the same force and validity as if served directly on the foreign bank or its successor, as the case may be.

SOURCES: Laws, 1996, ch. 441, § 40, eff from and after May 1, 1997.

§ 81-25-135. Service of processes, notices and demands.

(1) Service of any lawful process in any judicial or administrative proceeding against the foreign bank or any of its successors which arises out of the foreign bank's activities in this state shall be made on the commissioner by delivering to and leaving with him or her, or with any official having charge of his or her office, duplicate copies of such process, notice or demand. If any process, notice or demand is served on the commissioner, he or she shall immediately cause a copy thereof to be forwarded by registered mail addressed to such foreign bank at its principal office as the same appears in his or her records. Any service so had on the commissioner shall be returnable in not less than thirty (30) days.

(2) Nothing in this chapter limits or affects the right to serve any process, notice or demand required or permitted by law to be served upon a foreign corporation in any other manner now or hereafter permitted by law.

(3) The commissioner shall keep a record of all processes, notices and demands served upon him or her under this section and shall record therein the time of such service and his or her action with reference thereto.

SOURCES: Laws, 1996, ch. 441, § 41, eff from and after May 1, 1997.

§ 81-25-137. Filing of amendments to articles of incorporation.

A foreign bank which is licensed to maintain a Mississippi state branch or Mississippi state agency, whenever its articles of incorporation are amended, shall forthwith file in the office of the commissioner a copy of such amendment duly authenticated by the proper officer of the country of such foreign bank's organization, but the filing thereof may not of itself enlarge or alter the purpose or purposes for which such foreign bank is authorized to pursue in the transaction of its business in the State of Mississippi, nor authorize such foreign bank to transact business in the State of Mississippi under any name other than the name set forth in its license, nor extend the duration of its corporate existence.

SOURCES: Laws, 1996, ch. 441, § 42, eff from and after May 1, 1997.

§ 81-25-139. Amendment to license.

(1) A foreign bank which is licensed to establish and maintain a Mississippi state branch or Mississippi state agency must secure an amended license if it changes its corporate name, changes the duration of its corporate existence or desires to pursue in the State of Mississippi other or additional purposes than those set forth in its prior application under this chapter for a license, by making application therefor to the commissioner.

(2) The requirements with respect to the form and contents of an application under subsection (1), the manner of its execution, the filing of duplicate originals thereof with the commissioner, the issuance of an amended

license and the effect thereof shall be the same as in the case of an initial application for a license to establish and maintain a Mississippi state branch or Mississippi state agency.

SOURCES: Laws, 1996, ch. 441, § 43, eff from and after May 1, 1997.

§ 81-25-141. Notice of acquisition or merger.

A foreign bank which is licensed to establish and maintain a Mississippi state branch, Mississippi state agency or Mississippi representative office shall file with the commissioner a notice, in such form and containing such information as the commissioner may prescribe, no later than fourteen (14) calendar days after such foreign bank becomes aware of any acquisition of control of such foreign bank or merges with another foreign bank.

SOURCES: Laws, 1996, ch. 441, § 44, eff from and after May 1, 1997.

§ 81-25-143. Notice of relocation.

(1) No foreign bank which is licensed to establish and maintain a Mississippi state branch, Mississippi state agency or Mississippi representative office shall relocate any such office unless the foreign bank provides prior written notice to commissioner and the commissioner shall have approved such relocation.

(2) Written notice provided by a foreign bank under this section shall be in such form and contain such information as the commissioner shall require by regulation or order.

SOURCES: Laws, 1996, ch. 441, § 45, eff from and after May 1, 1997.

§ 81-25-145. Examination by commissioner.

(1) A Mississippi state branch, Mississippi state agency or Mississippi representative office shall be subject to examination by the commissioner at such intervals and in such a manner as he or she shall establish by regulation or order.

(2) In conducting an examination pursuant to this section, the commissioner shall:

(a) Have full access to the offices, books, accounts, and records of each office located in the State of Mississippi as well as all of the books, accounts and records maintained in this state of any office not located in the State of Mississippi of such foreign bank; and

(b) Have authority to require the attendance of and to examine under oath all persons whose testimony may be required relative to the activities of such office.

(3) A foreign bank which is licensed to establish and maintain a Mississippi state branch, Mississippi state agency or Mississippi representative office shall be assessed a reasonable fee for the expenses incurred by the commis-

sioner in making an examination of such office. Such fee shall be assessed in an amount and in a manner as the commissioner shall establish by regulation.

(4) A foreign bank which is licensed to establish and maintain a Mississippi state branch, Mississippi state agency or Mississippi representative office shall be subject to all reasonable fees and expenses in such amounts as the commissioner may require by regulation.

SOURCES: Laws, 1996, ch. 441, § 46, eff from and after May 1, 1997.

§ 81-25-147. Power and authority of commissioner.

(1) The commissioner shall have all of the powers granted to him or her by the laws of the State of Mississippi to the extent appropriate to enable him or her to supervise each Mississippi state branch, Mississippi state agency, or Mississippi representative office.

(2) If, after notice and a hearing, the commissioner finds that any person has violated any provision of this chapter or of any regulation or order issued under this chapter, he or she may, in addition to any other remedy or action available to the commissioner under the laws of the State of Mississippi, order such person to pay to the commissioner a civil penalty in such a manner and in such an amount as the commissioner shall determine in accordance with the laws of the State of Mississippi and regulations thereunder.

(3) In order to carry out the purposes under this chapter, the commissioner may:

(a) Enter into cooperative, coordinating or information-sharing agreements with any other bank supervisory agency or any organization affiliated or representing one or more bank supervisory agencies;

(b) With respect to periodic examination or other supervision of a foreign bank that maintains a Mississippi state branch, Mississippi state agency or Mississippi representative office, accept reports of examinations performed by, and reports submitted to, other bank supervisory agencies in lieu of conducting examinations, or of receiving reports, as might otherwise be required under this article;

(c) Enter into joint examinations or joint enforcement actions with any other bank supervisory agency having concurrent jurisdiction over any foreign bank, however, the commissioner may at any time take any such actions independently if the commissioner determines that such actions are necessary or appropriate to carry out his or her responsibilities under this chapter and to ensure compliance with the laws of the State of Mississippi;

(d) Enter into contracts with any bank supervisory agency having concurrent regulatory or supervisory jurisdiction over a foreign bank maintaining a Mississippi state branch, Mississippi state agency or Mississippi representative office, to engage the services of such agency's examiners at a reasonable rate of compensation or provide the services of the commissioner's examiners at a reasonable rate of compensation, provided that such contracts shall be in accordance with the policies and administrative procedures of the Mississippi State Personnel Board; and

(e) Assess supervisory and examination fees that shall be payable by foreign banks maintaining a Mississippi state branch, Mississippi state agency or Mississippi representative office in connection with the commissioner's performance of his or her duties under this chapter and in accordance with regulations adopted by the commissioner.

(4) Supervisory or examination fees assessed by the commissioner in accordance with the provisions of this chapter may be shared with other bank supervisory agencies or any organizations affiliated with or representing one or more bank supervisory agencies in accordance with agreements between the commissioner and such agencies or organizations.

SOURCES: Laws, 1996, ch. 441, § 47, eff from and after May 1, 1997.

§ 81-25-149. Filing of reports with commissioner.

(1) Each foreign bank which is licensed to establish and maintain a Mississippi state branch, Mississippi state agency or Mississippi representative office shall file with the commissioner such reports as and when the commissioner may require by regulation or order.

(2) Each report filed with the commissioner under this chapter or under any regulation or order issued under this chapter shall be in such form and contain such information, shall be signed in such manner, and shall be verified in such manner, as the commissioner may require by regulation or order.

SOURCES: Laws, 1996, ch. 441, § 48, eff from and after May 1, 1997.

§ 81-25-151. All reports subject to subpoena and public access.

All reports of examinations and investigations, correspondence and memoranda concerning or arising out of such examinations and investigations, including any duly authenticated copy of copies thereof in the possession of any foreign bank, shall be subject to subpoena and public access to the same extent as if such information pertained to a Mississippi state bank.

SOURCES: Laws, 1996, ch. 441, § 49, eff from and after May 1, 1997.

§ 81-25-153. Records to be kept and made available upon request by commissioner.

Each foreign bank which is licensed to establish and maintain a Mississippi state branch, Mississippi state agency or Mississippi representative office shall maintain at any such office, and make available upon request by the commissioner, appropriate books, accounts and records reflecting (a) all transactions effected by or on behalf of such office and (b) all actions taken in the State of Mississippi by employees of the foreign banking corporation located in the State of Mississippi to effect transactions on behalf of any office of such foreign bank located outside the State of Mississippi.

SOURCES: Laws, 1996, ch. 441, § 50, eff from and after May 1, 1997.

§ 81-25-155. Separation of assets.

(1) Each foreign bank which is licensed to establish and maintain a Mississippi state branch or Mississippi state agency in Mississippi shall keep the assets of its business in the State of Mississippi separate and apart from the assets of its business outside the State of Mississippi.

(2) The creditors of a foreign bank arising out of transactions with, and recorded on the books of, its Mississippi state branch or Mississippi state agency shall be entitled to absolute preference and priority over the creditors of such foreign bank's offices located outside the State of Mississippi with respect to the assets of such foreign bank in the State of Mississippi.

SOURCES: Laws, 1996, ch. 441, § 51, eff from and after May 1, 1997.

§ 81-25-157. Requirement to give notice that deposits and credit balances are not insured by the Federal Deposit Insurance Corporation.

Each foreign bank which is licensed to establish and maintain a Mississippi state branch or Mississippi state agency shall, in a manner established by the commissioner by regulation or order, give notice that deposits and credit balances in such office are not insured by the Federal Deposit Insurance Corporation.

SOURCES: Laws, 1996, ch. 441, § 52, eff from and after May 1, 1997.

§ 81-25-159. Limitations.

A foreign bank which is licensed to establish and maintain a Mississippi state branch or Mississippi state agency shall be subject to the same limitations with respect to the payment of interest on deposits as a state bank which is a member of the Federal Reserve System.

SOURCES: Laws, 1996, ch. 441, § 53, eff from and after May 1, 1997.

§ 81-25-161. Required securities.

(1) Each foreign bank which is licensed to establish and maintain a Mississippi state branch or Mississippi state agency shall keep on deposit, in accordance with such regulations or orders as the commissioner may promulgate, with such unaffiliated Mississippi banks as such foreign bank may designate and the commissioner may approve, interest-bearing stocks and bonds, notes, debentures, or other obligations of the United States or any agency or instrumentality thereof, or guaranteed by the United States, or of this state, or of a city, county, town, village, school district, or instrumentality of this state or guaranteed by this state, or dollar deposits, or obligations of the International Bank for Reconstruction and Development, or obligations issued

by the InterAmerican Development Bank, or obligations of the Asian Development Bank, or obligations issued by the African Development Bank, or such other assets as the commissioner shall by regulation or order permit, to an aggregate amount to be determined by the commissioner, based upon principal amount or market value, whichever is lower, in the case of the above-described securities, and subject to such limitations as he or she shall prescribe.

(2) The commissioner may from time to time require that the assets deposited pursuant to this section may be maintained by the foreign bank in such amount, in such form and subject to such conditions as he or she shall deem necessary or desirable for the maintenance of a sound financial condition, the protection of depositors and the public interest, and to maintain public confidence in the business of such Mississippi state branch or Mississippi state agency. The commissioner may give credit to reserves required to be maintained with a federal reserve bank in or outside the State of Mississippi pursuant to federal law, in accordance with such regulations or procedures as the commissioner may promulgate.

(3) So long as it shall continue business in the ordinary course, such foreign bank shall be permitted to collect interest on the securities deposited under this section and from time to time exchange, examine and compare such securities.

SOURCES: Laws, 1996, ch. 441, § 54, eff from and after May 1, 1997.

§ 81-25-163. Ratio of assets to liabilities.

(1) Each foreign bank which is licensed to establish and maintain a Mississippi state branch or Mississippi state agency shall hold in the State of Mississippi currency, bonds, notes, debentures, drafts, bills of exchange or other evidences of indebtedness, including loan participation agreements or certificates, or other obligations payable in the United States or in United States funds or, with the prior approval of the commissioner, in funds freely convertible into United States funds, or such other assets as the commissioner shall by regulation or order permit, in an amount which shall bear such relationship as the commissioner shall by regulation or order prescribe to liabilities of such foreign bank appearing in the books, accounts or records of its Mississippi state branch or Mississippi state agency, including acceptances, but excluding amounts due and other liabilities to other offices, agencies or branches of, and wholly owned (except for a nominal number of directors' shares) subsidiaries of, such foreign bank and such other liabilities as the commissioner shall determine.

(2) The commissioner is specifically authorized, in implementing the provisions of this section, to:

(a) Vary the ratio of assets to liabilities for Mississippi branches or Mississippi agencies, applicable under this section, of certain foreign banks as may be determined by the commissioner in his or her sole discretion to be necessary or desirable to reflect differences among such Mississippi branches or Mississippi agencies on account of:

(i) The financial condition of Mississippi branch or agency office(s) of the foreign bank,

(ii) The financial condition of branch or agency offices of the same foreign bank located in other states,

(iii) General economic conditions prevalent in the home country of the parent foreign bank, or

(iv) The financial condition of the parent foreign bank itself, including but not limited to:

1. The financial condition of its branches and agencies located in other countries,

2. The financial condition of its affiliated bank and nonbank subsidiaries in the United States, and

3. The financial condition of the foreign bank on a worldwide consolidated basis or in its home country.

(3) For the purposes of this section, the commissioner shall value marketable securities at principal amount or market value, whichever is lower, shall have the right to determine the value of any non-marketable bond, note, debenture, draft, bill of exchange, other evidence of indebtedness, including loan participation agreements or certificates, or of any other asset or obligation held or owed to the foreign bank or its Mississippi state branch or Mississippi state agency in Mississippi, and in determining the amount of assets for the purpose of computing the above ratio of assets to liabilities, shall have the power by regulation or order to exclude in whole or in part any particular asset.

(4) If, by reason of the existence or the potential occurrence of unusual and extraordinary circumstances, the commissioner deems it necessary or desirable for the maintenance of a sound financial condition, the protection of depositors, creditors and the public interest, and to maintain public confidence in the business of a Mississippi state branch or Mississippi state agency, he or she may, subject to such terms and conditions as he or she may prescribe, require such foreign bank to deposit the assets required to be held in the State of Mississippi pursuant to this section with such Mississippi banks, as the commissioner may designate.

(5) The assets held to satisfy the assets to liabilities relationship, prescribed by the commissioner pursuant to this section, shall include obligations of any person for money borrowed from a foreign bank holding a license to establish and maintain a Mississippi state branch or Mississippi state agency only to the extent that the total of such obligations of any person are not more than ten percent (10%) of such assets considered for purposes of this section.

SOURCES: Laws, 1996, ch. 441, § 55, eff from and after May 1, 1997.

§ 81-25-165. Closing of office.

(1) No foreign bank which is licensed to establish and maintain a Mississippi state branch, Mississippi state agency or Mississippi representative office shall close such office without filing an application with, and obtaining the prior approval of, the commissioner. An application by a foreign

bank under this section shall be in such form and include such information as the commissioner shall establish by regulation or order.

(2) If the commissioner finds, with respect to an application by a foreign bank under this section, that the closing of such office will not be substantially detrimental to the public convenience and advantage, the commissioner shall approve such application. If the commissioner finds otherwise, he or she shall deny the application.

(3) Whenever an application by a foreign bank under this section has been approved and all conditions precedent to such closing have been fulfilled, such foreign bank may close such office and shall promptly thereafter surrender to the commissioner the license which authorized the foreign bank to maintain the office.

SOURCES: Laws, 1996, ch. 441, § 56, eff from and after May 1, 1997.

§ 81-25-167. Suspension or revocation of license.

If, after notice and a hearing, the commissioner finds any of the following with respect to a foreign bank which is licensed to establish and maintain a Mississippi state branch or Mississippi state agency, he or she may issue an order suspending or revoking the license of such foreign bank:

(a) That the foreign bank has violated any provision of this chapter or of any regulation or order issued under this chapter or any provision of any other applicable law, regulation or order;

(b) That the foreign bank is transacting activities in the State of Mississippi in an unsafe or unsound manner or, in any case, is transacting activities elsewhere in an unsafe or unsound manner;

(c) That the foreign bank or any one or more of its Mississippi state branches or Mississippi state agencies is in an unsafe or unsound condition;

(d) That the foreign bank has ceased to operate any of its offices in the State of Mississippi without the prior approval of the commissioner in accordance with this chapter;

(e) That the foreign bank is insolvent in that it has ceased to pay its debts in the ordinary course of business, it cannot pay its debts as they become due, or its liabilities exceed its assets;

(f) That the foreign bank has suspended payment of its obligations, has made an assignment for the benefit of its creditors, or has admitted in writing its inability to pay its debts as they become due;

(g) That the foreign bank has applied for an adjudication of bankruptcy, reorganization, arrangement, or other relief under any foreign or domestic bankruptcy, reorganization, insolvency, or moratorium law, or that any person has applied for any such relief under such law against the foreign bank and the foreign bank has by any affirmative act approved of or consented to such action or such relief has been granted;

(h) That a receiver, liquidator, or conservator has been appointed for the foreign bank or that any proceeding for such an appointment or any similar proceeding has been initiated in the country of the foreign bank's organization;

(i) That the existence of the foreign bank or the authority of the foreign bank to transact banking business under the laws of the country of the foreign bank's organization has been suspended or terminated; or

(j) That any fact or condition exists which, if it had existed at the time when the foreign bank applied for its license to transact business in the State of Mississippi, would have been grounds for denying such application.

SOURCES: Laws, 1996, ch. 441, § 57, eff from and after May 1, 1997.

§ 81-25-169. Authority of of commissioner to suspend or revoke license.

If the commissioner finds that any of the factors set forth in Section 81-25-167 are true with respect to any foreign bank which is licensed to maintain a Mississippi state branch or Mississippi state agency and that it is necessary for the protection of the interests of creditors of the foreign bank's business in the State of Mississippi or, in any case, for the protection of the public interest that the commissioner immediately suspend or revoke the license of the foreign bank, the commissioner may issue, without notice and hearing, an order suspending or revoking the license of the foreign bank for a period of up to ninety (90) days, pending investigation or hearing. The suspension or revocation of the license of the foreign bank by the commissioner may be appealed using the same procedure in which a suspension or revocation of a license of a state bank may be appealed.

SOURCES: Laws, 1996, ch. 441, § 58, eff from and after May 1, 1997.

§ 81-25-171. Authority of commissioner to seize property.

(1) If the commissioner finds that any of the factors set forth in Section 81-25-167 are true with respect to any foreign bank which is licensed to establish and maintain a Mississippi state branch or Mississippi state agency and that it is necessary for the protection of the interests of the creditors of such foreign bank's business in the State of Mississippi or for the protection of the public interest that he or she take immediate possession of the property and business of the foreign bank, the commissioner may by order forthwith take possession of the property and business of the foreign bank in the State of Mississippi and retain possession until the foreign bank resumes business in the State of Mississippi or is finally liquidated. The foreign bank may, with the consent of the commissioner resume business in the State of Mississippi upon such conditions as the commissioner may prescribe by regulation or order.

(2) At any time within ten (10) days after the commissioner has taken possession of the property and business of a foreign bank pursuant to subsection (1) of this section, such foreign bank may petition the Chancery Court of Hinds County, Mississippi, for an order requiring the commissioner to show cause why he or she should not be enjoined from continuing such

possession. The court may, upon good cause being shown, direct the commissioner to refrain from further proceedings and to surrender such possession. The judgment of the court may be appealed by the commissioner or by the foreign bank in the manner provided by law for appeals from a judgment of Chancery Court of the State of Mississippi. Where the commissioner appeals the judgment of the court, such appeal shall operate as a stay of the judgment and a reinstatement of the commissioner's possession. The commissioner shall not be required to post any bond.

(3) Whenever the commissioner takes possession of the property and business of a foreign bank pursuant to subsection (1) of this section, he or she shall conserve or liquidate the property and business of such foreign bank pursuant to the laws of the State of Mississippi as if the foreign bank were a Mississippi state bank, with absolute preference and priority given to the creditors of such foreign bank arising out of transactions with, and recorded on the books of, its Mississippi state branch or Mississippi state agency over the creditors of such foreign bank's offices located outside the State of Mississippi.

(4) When the commissioner has completed the liquidation of the property and business of a foreign bank, the commissioner shall transfer any remaining assets to such foreign bank in accordance with such orders as the court may issue. However, in case the foreign bank has an office in another state of the United States which is in liquidation and the assets of such office appear to be insufficient to pay in full the creditors of that office, the court shall order the commissioner to transfer to the liquidator of that office such amount of any such remaining assets as appears to be necessary to cover such insufficiency; if there are two (2) or more such offices and the amount of remaining assets is less than the aggregate amount of insufficiencies with respect to the offices, the court shall order the commissioner to distribute the remaining assets among the liquidators of such offices in such manner as the court finds equitable.

SOURCES: Laws, 1996, ch. 441, § 59, eff from and after May 1, 1997.

ARTICLE 7.

MISSISSIPPI BRANCHES OF OUT-OF-STATE FOREIGN BANKS.

SEC.	
81-25-201.	Intention.
81-25-203.	Establishment of an interstate Mississippi state branch by an out-of-state foreign bank.

§ 81-25-201. Intention.

This article is intended generally to ensure that interstate state branches of out-of state foreign banks may be established and operated in the State of Mississippi (a) to the extent consistent with the provisions of Section 5 of the federal International Banking Act, and (b) under terms and conditions that are generally comparable to and no less favorable than those applicable to the establishment of interstate federal branches in the State of Mississippi by out-of-state foreign banks.

SOURCES: Laws, 1996, ch. 441, § 60, eff from and after May 1, 1997.

Federal Aspects — Federal International Banking Act, see 12 USCS § 3101 et seq.

§ 81-25-203. Establishment of an interstate Mississippi state branch by an out-of-state foreign bank.

(1) Except as provided in subsection (2) of this section, an out-of-state foreign bank may establish an interstate Mississippi state branch in the same manner, including by merger or other transactions under Section 44 of the Federal Deposit Insurance Act, as, and subject generally to the same criteria, standards, conditions, requirements and procedures applicable to the establishment of interstate branches in the State of Mississippi by, an out-of-state bank having the same home state in the United States, notwithstanding any provision of the laws or regulations of the State of Mississippi to the contrary.

(2) Notwithstanding the provisions of subsection (1), the commissioner:

(a) Shall apply to the establishment of an initial interstate Mississippi state branch, and subsequent intrastate Mississippi branches, of any out-of-state foreign bank the same criteria, standards, conditions, requirements, and procedures applicable under Article 3 of this chapter or regulations thereunder to the establishment of an initial Mississippi state branch, and of subsequent intrastate Mississippi branches, respectively;

(b) May apply any other criterion, standard, condition, requirement or provision of the laws or regulations of the State of Mississippi that is determined by the commissioner to be substantially equivalent to or consistent with a criterion, standard, condition, requirement or provision of federal law or regulation generally applicable to the establishment of branches in the United States by foreign banks or specifically applicable to the establishment of a branch in the United States by the applicant foreign bank;

(c) May by regulation or order allow an out-of-state foreign bank:

(i) To acquire an individual branch of any "insured bank" within the meaning of Section 3(h) of the Federal Deposit Insurance Act (12 USCS 1813(h)), or of any other depository institution, including another foreign bank, without acquiring the entire bank or other institution only to the extent not inconsistent with the ability of Mississippi state banks to do so; or

(ii) To acquire or merge with another foreign bank maintaining a Mississippi branch or agency and thereafter continue such operations as its own; and

(iii) To acquire or establish an interstate Mississippi branch through any other means not inconsistent with Section 5 of the federal International Banking Act (12 USCS 3103).

SOURCES: Laws, 1996, ch. 441, § 60, eff from and after May 1, 1997.

Federal Aspects — Federal Deposit Insurance Act, see 12 USCS §§ 1811 et seq.
Federal International Banking Act, see 12 USCS §§ 3101 et seq.

CHAPTER 27

Multistate, State and Limited Liability Trust Institutions

Article 1. General Provisions; Trust Institution Authorized Activities 81-27-1.001
Article 2. Trust Institution Offices 81-27-2.001
Article 3. Trusts and Fiduciaries 81-27-3.001
Article 4. State Trust Company 81-27-4.101
Article 5. Investments, Loans and Deposits 81-27-5.001
Article 6. Additional Definitions; Ownership; Governance; Mergers 81-27-6.001
Article 7. Enforcement Actions 81-27-7.001
Article 8. Dissolution and Receivership; Conservatorship 81-27-8.001

Article 1.

General Provisions; Trust Institution Authorized Activities.

Subarticle A. General........81-27-1.001
Subarticle B. Companies Authorized to Act as a Fiduciary........81-27-1.101

Subarticle A.

General.

Sec.
81-27-1.001. Title and purposes.
81-27-1.002. Certain Definitions.
81-27-1.003. Regulations.
81-27-1.004. Severability.

§ 81-27-1.001. Title and purposes.

(a) Articles 1 and 2 of this chapter may be cited as the Multistate Trust Institutions Act.

(b) It is the express intent of Articles 1 and 2 of this chapter to permit banks and other depository institutions, foreign banks and trust companies to engage in the trust business on a multistate and international basis to the extent consistent with the safety and soundness of the trust institutions engaged in a trust business in this state and the protection of consumers, clients and other customers of such trust institutions.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

§ 81-27-1.002. Certain Definitions.

(a) In Articles 1 and 2 of this chapter:

(1) "Account" means the client relationship established with a trust company involving the transfer of funds or property to the trust company, including a relationship in which the trust company acts as trustee, executor, administrator, guardian, custodian, conservator, bailee, receiver,

registrar, or agent, but excluding a relationship in which the trust company acts solely in an advisory capacity.

(2) "Act as a fiduciary" or "acting as a fiduciary" means to:

(A) Accept or execute trusts, including to (i) act as trustee under a written agreement; (ii) receive money or other property in its capacity as trustee for investment in real or personal property; (iii) act as trustee and perform the fiduciary duties committed or transferred to it by order of a court of competent jurisdiction; (iv) act as trustee of the estate of a deceased person; or (v) act as trustee for a minor or incapacitated person;

(B) Administer in any other fiduciary capacity real or tangible personal property; or

(C) Act pursuant to order of court of competent jurisdiction as executor or administrator of the estate of a deceased person or as a guardian or conservator for a minor or incapacitated person.

(3) "Administer" with respect to real or tangible personal property means, as an agent or in another representative capacity, to possess, purchase, sell, lease or insure, safekeep or otherwise manage the property.

(4) "Affiliate" means a company that directly or indirectly controls, is controlled by, or is under common control with a trust institution or other company.

(5) "Bank" has the meaning set forth in 12 USCS Section 1813(h); provided that the term "bank" shall not include any "foreign bank" as defined in 12 USCS Section 3101(7), except for any such foreign bank organized under the laws of a territory of the United States, Puerto Rico, Guam, American Samoa or the Virgin Islands, the deposits of which are insured by the Federal Deposit Insurance Corporation.

(6) "Bank supervisory agency" means:

(A) Any agency of another state with primary responsibility for chartering and supervising a trust institution; and

(B) The Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, the Office of Thrift Supervision and any successor to these agencies.

(7) "Branch" with respect to a depository institution has the meaning set forth in Section 81-7-1 et seq.

(8) "Charter" means a charter, license or other authority issued by the commissioner or a bank supervisory agency authorizing a trust institution to act as a fiduciary in its home state.

(9) "Client" means a person to whom a trust institution owes a duty or obligation under a trust or other account administered by the trust institution or as an advisor or agent, regardless of whether the trust institution owes a fiduciary duty to the person. The term includes the noncontingent beneficiaries of an account.

(10) "Commissioner" means the Commissioner of Banking and Consumer Finance then in office and, where appropriate, all of his or her successors and predecessors in office.

(11) "Company" includes a bank, trust company, corporation, limited liability company, partnership, association, business trust, or another trust.

(12) "Department" means the Department of Banking and Consumer Finance.

(13) "Depository institution" means any company chartered to act as a fiduciary and included for any purpose within any of the definitions of "insured depository institution" as set forth in 12 USCS Section 1813(c)(2) and (3).

(14) "Fiduciary record" means a matter written, transcribed, recorded, received or otherwise in the possession or control of a trust company, whether in physical or electromagnetic form, that is necessary to preserve information concerning an act or event relevant to an account or a client of a trust company.

(15) "Foreign bank" means a foreign bank, as defined in Section 1(b)(7) of the International Banking Act of 1978, chartered to act as a fiduciary in a state other than this state.

(16) "Home state" means (A) with respect to a federally chartered trust institution and a foreign bank, the state in which such institution maintains its principal office and (B) with respect to any other trust institution, the state which chartered such institution.

(17) "Home state regulator" means the bank supervisory agency with primary responsibility for chartering and supervising an out-of-state trust institution.

(18) "Host state" means a state, other than the home state of a trust institution, or a foreign country in which the trust institution maintains or seeks to acquire or establish an office.

(19) "License" means the authority granted by the commissioner pursuant to this chapter to establish, acquire or maintain a trust office.

(20) "New trust office" means a trust office located in a host state which (i) is originally established by the trust institution as a trust office and (ii) does not become a trust office of the trust institution as a result of (A) the acquisition of another trust institution or trust office of another trust institution or (B) a merger, consolidation, or conversion involving any such trust institution or trust office.

(21) "Office" with respect to a trust institution means the principal office, a trust office or a representative trust office, but not a branch.

(22) "Out-of-state bank" means a bank chartered to act as a fiduciary in any state or states other than this state.

(23) "Out-of-state trust company" means either a trust company that is not a state trust company or a savings association whose principal office is not located in this state.

(24) "Out-of-state trust institution" means a trust institution that is not a state trust institution.

(25) "Person" means an individual, a company or any other legal entity.

(26) "Principal office" with respect to:

(A) A state trust company, means a location registered with the commissioner as the state trust company's home office at which:

(i) The state trust company does business;

(ii) The state trust company keeps its corporate books and a set of its material records, including material fiduciary records; and

(iii) At least one (1) executive officer of the state trust company maintains an office; or

(B) A trust institution other than a state trust company, means its principal place of business in the United States.

(27) "Registration" means the process by which a trust institution has been authorized by the commissioner to acquire, establish or maintain a representative trust office in this state.

(28) "Representative trust office" means an office at which a trust institution has been authorized by the commissioner to engage in a trust business other than acting as a fiduciary.

(29) "Savings association" means a depository institution that is neither a bank nor a foreign bank.

(30) "State" means any state of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

(31) "State bank" means (A) a bank chartered to act as a fiduciary by this state or (B) a foreign bank as defined in Section 1(b)(7) of the International Banking Act of 1978 chartered to act as a fiduciary in this state.

(32) "State trust company" means a corporation or a limited liability trust company organized or reorganized under this chapter, including a trust company organized under the laws of this state before July 1, 1998.

(33) "State trust institution" means a trust institution having its principal office in this state.

(34) "Trust business" means the holding out by a person to the public by advertising, solicitation or other means that the person is available to perform any service of a fiduciary in this or another state, including but not limited to:

(A) Acting as a fiduciary, or

(B) To the extent not acting as a fiduciary, any of the following: (i) receiving for safekeeping personal property of every description; (ii) acting as assignee, bailee, conservator, custodian, escrow agent, registrar, receiver or transfer agent; or (iii) acting as financial advisor, investment advisor or manager, agent or attorney-in-fact in any agreed upon capacity.

(35) "Trust company" means a state trust company or any other company chartered to act as a fiduciary that is neither a depository institution nor a foreign bank.

(36) "Trust institution" means a depository institution, foreign bank, state bank or trust company.

(37) "Trust office" means an office, other than the principal office, at which a trust institution is licensed by the commissioner to act as a fiduciary.

(38) "Unauthorized trust activity" means (A) a company, other than one identified in Section 81-27-1.101(a), acting as a fiduciary within this state,

(B) a company engaging in a trust business in this state at any office of such company that is not its principal office, if it is a state trust institution, or that is not a trust office or a representative trust office of such company, or (C) an out-of-state trust institution engaging in a trust business in this state at any time an order issued by the commissioner pursuant to Section 81-27-2.302(b) is in effect.

(b) These definitions shall be liberally construed to accomplish the purposes of the chapter. Additional definitions applicable to this chapter are contained in Section 81-27-6.001. The commissioner by rule or regulation may adopt other definitions to accomplish the purposes of this chapter.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

§ 81-27-1.003. Regulations.

The commissioner may promulgate such rules and regulations as he or she determines to be necessary or appropriate in order to implement the provisions of this chapter.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

§ 81-27-1.004. Severability.

If any provision of this chapter or the application of such provision is found by any court of competent jurisdiction in the United States to be invalid as to any trust institution or other person or circumstance, or to be superseded by federal law, the remaining provisions of this chapter shall not be affected and shall continue to apply to any trust institution or other person or circumstance.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

SUBARTICLE B.

COMPANIES AUTHORIZED TO ACT AS A FIDUCIARY.

SEC.	
81-27-1.101.	Companies authorized to act as a fiduciary.
81-27-1.102.	Activities not requiring a charter, etc.
81-27-1.103.	Trust business of state trust institution.
81-27-1.104.	Trust business of out-of-state trust institution.
81-27-1.105.	Name of trust institution.

§ 81-27-1.101. Companies authorized to act as a fiduciary.

(a) No company shall act as a fiduciary in this state except:

(1) A state trust company;

(2) A state bank;

(3) A savings association organized under the laws of this state and authorized to act as a fiduciary pursuant to Section 81-12-1 et seq. or Section 81-14-1 et seq.;

(4) A national bank having its principal office in this state and authorized by the Comptroller of the Currency to act as a fiduciary pursuant to 12 USCS 92a;

(5) A federally chartered savings association having its principal office in this state and authorized by its federal chartering authority to act as a fiduciary;

(6) An out-of-state bank with a branch in this state established or maintained pursuant to Section 81-23-1 et seq. or a trust office licensed by the commissioner pursuant to this chapter;

(7) An out-of-state trust company with a trust office licensed by the commissioner pursuant to this chapter; or

(8) A foreign bank with a trust office licensed by the commissioner pursuant to this chapter.

(b) No company shall engage in an unauthorized trust activity.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

ATTORNEY GENERAL OPINIONS

"Title agent companies" are engaged in the trust business and likewise may only engage in such activities on behalf of an entity listed in Section 81-27-1.101, unless excepted under Section 81-27-1.102. Whether a particular "title agent company" is performing such activities on behalf of an authorized entity or is otherwise excepted under Section 81-27-1.102, is a determination that would have to be made on a case by case basis. Allison, Dec. 16, 2005, A.G. Op. 05-0423.

§ 81-27-1.102. Activities not requiring a charter, etc.

Notwithstanding any other provision of this chapter, a company does not engage in the trust business or in any other business in a manner requiring a charter, license or registration under this chapter or in an unauthorized trust activity by:

(a) Acting in a manner authorized by law and in the scope of authority as an agent of a trust institution with respect to an activity which is not an unauthorized trust activity;

(b) Rendering a service customarily performed as an attorney or law firm in a manner approved and authorized by the Supreme Court of this state;

(c) Acting as trustee under a deed of trust delivered only as security for the payment of money or for the performance of another act;

(d) Receiving and distributing rents and proceeds of sale as a licensed real estate broker on behalf of a principal in a manner authorized by the Mississippi Real Estate Commission;

(e) Engaging in a securities transaction or providing an investment advisory service as a licensed and registered broker-dealer, investment advisor or registered representative thereof, provided the activity is regulated by the Secretary of State or the Securities and Exchange Commission;

(f) Rendering service as a financial advisor or financial planner, provided that the person rendering that service has successfully completed the education and training requirements prescribed by a national certifying organization, has received certification from that organization, and holds current certification from that organization;

(g) Engaging in the sale and administration of an insurance product by an insurance company or agent licensed by the Department of Insurance to the extent that the activity is regulated by the Department of Insurance;

(h) Engaging in the lawful sale of prepaid funeral benefits under a permit issued by the Insurance Commissioner under Section 83-37-1 et seq. or engaging in the lawful business of a perpetual care cemetery corporation under Sections 41-43-35 through 41-43-53;

(i) Acting as trustee under a voting trust as provided by Section 91-9-1 et seq.;

(j) Acting as trustee by a public, private, or independent institution of higher education or a university system, including its affiliated foundations or corporations, with respect to endowment funds or other funds owned, controlled, provided to or otherwise made available to such institution with respect to its educational or research purposes;

(k) Engaging in other activities expressly excluded from the application of this chapter by rule of the department;

(*l*) Rendering services customarily performed by a certified public accountant in a manner authorized by the State Board of Public Accountancy;

(m) Provided the company is a trust institution and is not barred by order of the commissioner from engaging in a trust business in this state pursuant to Section 81-27-2.302(b), (1) marketing or soliciting in this state through the mails, telephone, any electronic means or in person with respect to acting or proposing to act as a fiduciary outside of this state, (2) delivering money or other intangible assets and receiving the same from a client or other person in this state, or (3) accepting or executing outside of this state a trust of any client or otherwise acting as a fiduciary outside of this state for any client;

(n) Acting as trustee by a religious denomination, church or synagogue, including affiliated foundations or corporations, with respect to endowment funds or other funds owned, controlled, provided to or otherwise made available to such religious denomination, church or synagogue with respect to its religious or charitable purposes.

SOURCES: Laws, 1998, ch. 437, § 1; Laws, 2010, ch. 557, § 1, eff from and after passage (approved May 12, 2010.)

Editor's Note — Section 91-9-1, referred to in (i), was repealed by Laws 2014, ch. 421, § 105, effective July 1, 2014.

ATTORNEY GENERAL OPINIONS

"Title agent companies" are engaged in the trust business and likewise may only engage in such activities on behalf of an entity listed in Section 81-27-1.101, unless excepted under Section 81-27-1.102. Whether a particular "title agent company" is performing such activities on behalf of an authorized entity or is otherwise excepted under Section 81-27-1.102, is a determination that would have to be made on a case by case basis. Allison, Dec. 16, 2005, A.G. Op. 05-0423.

§ 81-27-1.103. Trust business of state trust institution.

(a) A state trust institution may act as a fiduciary or otherwise engage in a trust business in this or any other state or foreign country, subject to complying with applicable laws of such state or foreign country, at an office established and maintained pursuant to this chapter, at a branch or at any location other than an office or branch.

(b) In addition, a state trust institution may conduct any activities at any office outside this state that are permissible for a trust institution chartered by the host state where the office is located, except to the extent such activities are expressly prohibited by the laws of this state or by any regulation or order of the commissioner applicable to the state trust institution; however, the commissioner may waive any such prohibition if he or she determines, by order or regulation, that the involvement of out-of-state offices of state trust institutions in particular activities would not threaten the safety or soundness of such state trust institutions.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

§ 81-27-1.104. Trust business of out-of-state trust institution.

An out-of-state trust institution which establishes or maintains one or more offices in this state under this chapter may conduct any activity at each such office which would be authorized under the laws of this state for a state trust institution to conduct at such an office.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

§ 81-27-1.105. Name of trust institution.

A state trust company or out-of-state trust institution may register any name with the commissioner in connection with establishing a principal office, trust office or representative trust office in this state pursuant to this chapter, except that the commissioner may determine that a name proposed to be registered is potentially misleading to the public and require the registrant to select a name which is not potentially misleading.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

ARTICLE 2.

TRUST INSTITUTION OFFICES.

Subarticle A. State Trust Institution Offices....................................81-27-2.001
Subarticle B. Out-of-State Trust Institution Trust Office....................81-27-2.101
Subarticle C. Out-of-State Trust Institution Representative Trust Office..81-27-2.201
Subarticle D. Supervision of Out-of-State Trust Institution.................81-27-2.301

SUBARTICLE A.

STATE TRUST INSTITUTION OFFICES.

SEC.

81-27-2.001. Trust business.
81-27-2.002. Branches and offices of state trust institutions.
81-27-2.003. State trust company principal office.
81-27-2.004. Trust office; representative trust office.
81-27-2.005. Out-of-state offices.

§ 81-27-2.001. Trust business.

A state trust company or a state bank may:

(a) Perform any act as a fiduciary;

(b) Engage in any trust business;

(c) Exercise any incidental power that is reasonably necessary to enable it to fully exercise, according to commonly accepted fiduciary customs and usages, a power conferred in this chapter; and

(d) If a state trust company, exercise any other power authorized by Section 81-27-4.101.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

§ 81-27-2.002. Branches and offices of state trust institutions.

(a) A state trust institution may act as a fiduciary and engage in a trust business at each trust office as permitted by this chapter and at a branch.

(b) A state trust institution may not act as a fiduciary but may otherwise engage in a trust business at a representative trust office as permitted by this chapter.

(c) Notwithstanding subsections (a) and (b) of this section, a state bank or a state trust company may not engage at an out-of-state office in any trust business not permitted for such an office by the host state where the office is located to trust institutions chartered by such state.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

§ 81-27-2.003. State trust company principal office.

(a) Each state trust company must have and continuously maintain a principal office in this state.

(b) Each executive officer at the principal office is an agent of the state trust company for service of process.

(c) A state trust company may change its principal office to any location within this state by filing a written notice with the commissioner setting forth the name of the state trust company, the street address of its principal office before the change, the street address to which the principal office is to be changed, and a copy of the resolution adopted by the board authorizing the change.

(d) The change of principal office shall take effect on the thirty-first day after the date the commissioner receives the notice pursuant to paragraph (c) of this section, unless the commissioner establishes an earlier or later date or unless prior to such day the commissioner notifies the state trust company that it must establish to the satisfaction of the commissioner that the relocation is consistent with the original determination made under Section 81-27-4.103(b) for the establishment of a state trust company at that location, in which event the change of principal office shall take effect when approved by the commissioner.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in a statutory reference in subsection (d). The reference to "Section 81-27-4.003(b)" was changed to "Section 81-27-4.103(b)." The Joint Committee ratified the correction at its August 5, 2008, meeting, and the section has been reprinted in the supplement to reflect the corrected language.

§ 81-27-2.004. Trust office; representative trust office.

(a) A state trust institution may establish or acquire and maintain trust offices or representative trust offices anywhere in this state. A state trust institution desiring to establish or acquire and maintain such an office shall file a written notice with the commissioner setting forth the name of the state trust institution, the location of the proposed additional office and whether the additional office will be a trust office or a representative trust office, furnish a copy of the resolution adopted by the board authorizing the additional office and pay the filing fee, if any, prescribed by the commissioner.

(b) The notificant may commence business at the additional office on the thirty-first day after the date the commissioner receives the notice, unless the commissioner specifies an earlier or later date.

(c) The thirty-day period of review may be extended by the commissioner on a determination that the written notice raises issues that require additional information or additional time for analysis. If the period of review is extended, the state trust institution may establish the additional office only on prior written approval by the commissioner.

(d) The commissioner may deny approval of the additional office if the commissioner finds that the notificant lacks sufficient financial resources to undertake the proposed expansion without adversely affecting its safety or soundness or that the proposed office would be contrary to the public interest.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

§ 81-27-2.005. Out-of-state offices.

(a) A state bank, a state trust company or a savings association chartered under the laws of this state may establish and maintain a new trust office or a representative trust office or acquire and maintain an office in a state other than this state. Such a trust institution desiring to establish or acquire and maintain an office in another state under this section shall file a notice on a form prescribed by the commissioner, which shall set forth the name of the trust institution, the location of the proposed office, whether the office will be a trust office or a representative trust office, and whether the laws of the jurisdiction where the office will be located permit the office to be maintained by the trust institution, furnish a copy of the resolution adopted by the board authorizing the out-of-state office, and pay the filing fee, if any, prescribed by the commissioner.

(b) The notificant may commence business at the additional office on the thirty-first day after the date the commissioner receives the notice, unless the commissioner specifies an earlier or later date.

(c) The thirty-day period of review may be extended by the commissioner on a determination that the written notice raises issues that require additional information or additional time for analysis. If the period of review is extended, the trust institution may establish the additional office only on prior written approval by the commissioner.

(d) The commissioner may deny approval of the additional office if the commissioner finds that the notificant lacks sufficient financial resources to undertake the proposed expansion without adversely affecting its safety or soundness or that the proposed office would be contrary to the public interest. In acting on the notice, the commissioner shall consider the views of the appropriate bank supervisory agencies.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

SUBARTICLE B.

OUT-OF-STATE TRUST INSTITUTION TRUST OFFICE.

SEC.

81-27-2.101. Trust business at a branch or trust office.
81-27-2.102. Establishing an interstate trust office.
81-27-2.103. Acquiring an interstate trust office.
81-27-2.104. Requirement of notice.
81-27-2.105. Conditions for approval.
81-27-2.106. Additional trust offices.

§ 81-27-2.101. Trust business at a branch or trust office.

An out-of-state trust institution may act as a fiduciary in this state or engage in a trust business at an office in this state only if it maintains (i) a trust office in this state as permitted by this subarticle or (ii) a branch in this state.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

§ 81-27-2.102. Establishing an interstate trust office.

(a) An out-of-state trust institution that does not operate a trust office in this state and that meets the requirements of this subarticle may establish and maintain a new trust office in this state.

(b) Until January 1, 1999, an out-of-state trust institution may not establish a new trust office in this state unless a similar institution chartered under the laws of this state to act as a fiduciary, is permitted to establish a new trust office that may engage in activities substantially similar to those permitted to trust offices of out-of-state trust institutions under Section 81-27-2.101, in the state where such out-of-state trust institution has its principal office.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

§ 81-27-2.103. Acquiring an interstate trust office.

(a) An out-of-state trust institution that does not operate a trust office in this state and that meets the requirements of this subarticle may acquire and maintain a trust office in this state.

(b) Until January 1, 1999, no out-of-state trust institution may maintain a trust office in this state unless a similar institution chartered under the laws of this state to act as a fiduciary is permitted to acquire and maintain a trust office through an acquisition of a trust office in the state where such out-of-state trust institution has its principal office and may engage in activities substantially similar to those permitted to trust offices of out-of-state trust institutions under Section 81-27-2.101, in the state where such out-of-state trust institution has its principal office.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

§ 81-27-2.104. Requirement of notice.

An out-of-state trust institution desiring to establish and maintain a new trust office or acquire and maintain a trust office in this state pursuant to this subarticle shall provide, or cause its home state regulator to provide, written notice of the proposed transaction to the commissioner on or after the date on which the out-of-state trust institution applies to the home state regulator for approval to establish and maintain or acquire the trust office. The filing of such notice shall be preceded or accompanied by a copy of the resolution adopted by the board authorizing the additional office and the filing fee, if any, prescribed by the commissioner.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

§ 81-27-2.105. Conditions for approval.

(a) No trust office of an out-of-state trust institution may be acquired or established in this state under this subarticle unless:

(1) The out-of-state trust institution shall have confirmed in writing to the commissioner that for as long as it maintains a trust office in this state, it will comply with all applicable laws of this state.

(2) The notificant shall have provided satisfactory evidence to the commissioner of compliance with (i) any applicable requirements of Sections 79-4-15.01 through 79-4-15.10 and (ii) the applicable requirements of its home state regulator for acquiring or establishing and maintaining such office.

(3) The commissioner, acting within sixty (60) days after receiving notice under Section 81-27-2.104, shall have certified to the home state regulator that the requirements of this subarticle have been met and the notice has been approved or, if applicable, that any conditions imposed by the commissioner pursuant to paragraph (b) of this subsection have been satisfied.

(b) The out-of-state trust institution may commence business at the trust office on the sixty-first day after the date the commissioner receives the notice unless the commissioner specifies an earlier or later date, provided, with respect to an out-of-state trust institution that is not a depository institution and for which the commissioner shall have conditioned such approval on the satisfaction by the notificant of any requirement applicable to a state trust company pursuant to Section 81-27-4.104(a) or 81-27-4.106, such institution shall have satisfied such conditions and provided to the commissioner satisfactory evidence thereof.

(c) The sixty-day period of review may be extended by the commissioner on a determination that the written notice raises issues that require additional information or additional time for analysis. If the period of review is extended, the out-of-state trust institution may establish the office only on prior written approval by the commissioner.

(d) The commissioner may deny approval of the office if the commissioner finds that the notificant lacks sufficient financial resources to undertake the proposed expansion without adversely affecting its safety or soundness or that the proposed office is contrary to the public interest. In acting on the notice, the commissioner shall consider the views of the appropriate bank supervisory agencies.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

§ 81-27-2.106. Additional trust offices.

An out-of-state trust institution that maintains a trust office in this state under this subarticle may establish or acquire additional trust offices or representative trust offices in this state to the same extent that a state trust institution may establish or acquire additional offices in this state pursuant to the procedures for establishing or acquiring such offices set forth in Section 81-27-2.004.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

SUBARTICLE C.

OUT-OF-STATE TRUST INSTITUTION REPRESENTATIVE TRUST OFFICE.

SEC.
81-27-2.201. Representative trust office business.
81-27-2.202. Registration of representative trust office.

§ 81-27-2.201. Representative trust office business.

(a) An out-of-state trust institution may not act as a fiduciary, but may otherwise engage in a trust business, at a representative trust office as permitted by this subarticle.

(b) Subject to the requirements contained in this subarticle, an out-of-state trust institution may establish and maintain representative trust offices anywhere in this state.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

§ 81-27-2.202. Registration of representative trust office.

(a) An out-of-state trust institution may establish or acquire and maintain a representative trust office in this state. An out-of-state trust institution not maintaining a trust office in this state and desiring to establish or acquire and maintain a representative trust office shall file a notice on a form prescribed by the commissioner which shall set forth the name of the out-of-state trust institution and the location of the proposed office and satisfactory evidence that the notificant is a trust institution, furnish a copy of the resolution adopted by the board authorizing the representative trust office, and pay the filing fee, if any, prescribed by the commissioner.

(b) The notificant may commence business at the representative trust office on the thirty-first day after the date the commissioner receives the notice, unless the commissioner specifies an earlier or later date.

(c) The thirty-day period of review may be extended by the commissioner on a determination that the written notice raises issues that require additional information or additional time for analysis. If the period of review is extended, the out-of-state trust institution may establish the representative trust office only on prior written approval by the commissioner.

(d) The commissioner may deny approval of the representative trust office if the commissioner finds that the notificant lacks sufficient financial resources to undertake the proposed expansion without adversely affecting its safety or soundness or that the proposed office would be contrary to the public interest. In acting on the notice, the commissioner shall consider the views of the appropriate bank supervisory agencies.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

SUBARTICLE D.

SUPERVISION OF OUT-OF-STATE TRUST INSTITUTION.

SEC.
81-27-2.301. Examinations; periodic reports; cooperative agreements; assessment of fees.
81-27-2.302. Enforcement.
81-27-2.303. Notice of subsequent merger, closing, etc.

§ 81-27-2.301. Examinations; periodic reports; cooperative agreements; assessment of fees.

(a) To the extent consistent with subsection (c) of this section, the commissioner may make such examinations of any office established and maintained in this state pursuant to this article by an out-of-state trust institution as the commissioner may deem necessary to determine whether the office is being operated in compliance with the laws of this state and in accordance with safe and sound banking practices. The provisions of Sections 81-1-81, 81-1-83 and 81-23-17 shall apply to such examinations.

(b) The commissioner may require periodic reports regarding any out-of-state trust institution that has established and maintained an office in this state pursuant to this article. The required reports shall be provided by such trust institution or by the home state regulator. Any reporting requirements prescribed by the commissioner under this subsection (b) shall be (i) consistent with the reporting requirements applicable to state trust companies and (ii) appropriate for the purpose of enabling the commissioner to carry out his or her responsibilities under this article.

(c) The commissioner may enter into cooperative, coordinating and information-sharing agreements with any other bank supervisory agencies or any organization affiliated with or representing one or more bank supervisory agencies with respect to the periodic examination or other supervision of any office in this state of an out-of-state trust institution, or any office of a state trust institution in any host state, and the commissioner may accept such a party's report of examination and report of investigation in lieu of conducting his or her own examination or investigation.

(d) The commissioner may enter into contracts with any bank supervisory agency that has concurrent jurisdiction over a state trust institution or an out-of-state trust institution maintaining an office in this state to engage the services of such agency's examiners at a reasonable rate of compensation, or to provide the services of the commissioner's examiners to such agency at a reasonable rate of compensation.

(e) The commissioner may enter into joint examinations or joint enforcement actions with other bank supervisory agencies having concurrent jurisdiction over any office established and maintained in this state by an out-of-state trust institution or any office established and maintained by a state trust institution in any host state. However, the commissioner may at any time take such actions independently if the commissioner deems such actions to be necessary or appropriate to carry out his or her responsibilities under this subarticle or to ensure compliance with the laws of this state; but in the case of an out-of-state trust institution, the commissioner shall recognize the exclusive authority of the home state regulator over corporate governance matters and the primary responsibility of the home state regulator with respect to safety and soundness matters.

(f) Each out-of-state trust institution that maintains one or more offices in this state may be assessed and, if assessed, shall pay supervisory and examination fees in accordance with the laws of this state and regulations of the commissioner. Such fees may be shared with other bank supervisory agencies or any organization affiliated with or representing one or more bank supervisory agencies in accordance with agreements between such parties and the commissioner.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

§ 81-27-2.302. Enforcement.

After notice and opportunity for hearing,

(a) The commissioner may determine:

(1) That an office maintained by an out-of-state trust institution in this state is being operated in violation of any provision of the laws of this state or in an unsafe and unsound manner; or

(2) That a company is engaged in an unauthorized trust activity. In either event, the commissioner shall have the authority to take all such enforcement actions as he or she would be empowered to take if the office or the company were a state trust company, including but not limited to issuing an order temporarily or permanently prohibiting the company from engaging in a trust business in this state;

(b) The commissioner may determine by order that an out-of-state trust institution engaging in or proposing to engage in a trust business in this state does not meet the requirements for establishing a representative trust office in this state pursuant to Section 81-27-2.202, which order shall be effective on the date of issuance or such other date as the commissioner shall determine;

(c) In cases involving extraordinary circumstances requiring immediate action, the commissioner may take any action permitted by Section 81-27-2.302(a) or (b) without notice or opportunity for hearing, but shall promptly afford a subsequent hearing upon an application to rescind the action taken. The commissioner shall promptly give notice to the home state regulator of each enforcement action taken against an out-of-state trust institution and, to the extent practicable, shall consult and cooperate with the home state regulator in pursuing and resolving said enforcement action.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

§ 81-27-2.303. Notice of subsequent merger, closing, etc.

Each out-of-state trust institution that maintains an office in this state pursuant to this article, or the home state regulator of such trust institution, shall give at least thirty (30) days' prior written notice (or, in the case of an emergency transaction, such shorter notice as is consistent with applicable state or federal law) to the commissioner of (i) any merger, consolidation, or other transaction that would cause a change of control with respect to such out-of-state trust institution or any bank holding company that controls such trust institution, with the result that an application would be required to be filed pursuant to the federal Change in Bank Control Act of 1978, as amended, 12 USCS Section 1817(j), or the federal Bank Holding Company Act of 1956, as amended, 12 USCS Section 1841 et seq., or any successor statutes thereto, (ii) any transfer of all or substantially all of the trust accounts or trust assets of the out-of-state trust institution to another person or (iii) the closing or disposition of any office in this state.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

ARTICLE 3.

TRUSTS AND FIDUCIARIES.

Subarticle A. General....................81-27-3.001
Subarticle B. Designation of Trustee and Governing Law....................81-27-3.101
Subarticle C. Delegation; Affiliates....................81-27-3.201
Subarticle D. Fees....................81-27-3.301
Subarticle E. Acquisition of Trust Assets....................81-27-3.401

SUBARTICLE A.

GENERAL.

SEC.
81-27-3.001. Title and purposes.
81-27-3.002. Definitions.

§ 81-27-3.001. Title and purposes.

(a) Articles 3, 4 and 5 of this chapter may be cited as the State Trust Institution Charter Modernization Act.

(b) The express purposes of Articles 3, 4 and 5 of this chapter are to:

(1) Provide for the chartering of trust companies and to permit trust companies to act as fiduciaries and otherwise engage in the trust business in this state, provided that they are adequately capitalized, competently managed by persons of integrity, and supervised by the commissioner, all in order to ensure that such trust companies are operated in compliance with law, in a safe and sound manner and in a manner which protects their clients and customers and other consumers in this state;

(2) Improve service and reduce costs for trust institution clients and customers and other consumers in this state by modernizing state laws to permit the delegation by trust institutions of fiduciary functions but not fiduciary responsibility, authorize clients to designate any trust institution to act for them and to choose an appropriate state's law to govern fiduciary instruments and investments, and protect consumers from excessive fees or undisclosed conflicts of interest of trust institutions and their affiliates; and

(3) Permit adequately capitalized and professionally managed trust companies serving only family members and their affiliated entities to operate as private trust companies which may not provide services to the general public.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

§ 81-27-3.002. Definitions.

Definitions contained in Sections 81-27-1.002 and 81-27-6.001 shall apply to Articles 3, 4 and 5 of this chapter unless the context otherwise requires.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

SUBARTICLE B.

DESIGNATION OF TRUSTEE AND GOVERNING LAW.

Sec.
81-27-3.101. Designation of trustee.
81-27-3.102. Choice of law governing trusts.
81-27-3.103. Choice of law governing fiduciary investments.

§ 81-27-3.101. Designation of trustee.

Any person residing in this state may designate any trust institution to act as a fiduciary on behalf of such person.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

§ 81-27-3.102. Choice of law governing trusts.

Any trust institution that maintains a trust office or representative trust office in this state and its affected clients may designate either (i) this state, (ii) a state where affected clients reside or (iii) the state where such trust institution has its principal office as the state whose laws shall govern any written agreement between such trust institution and its client or any instrument under which the trust institution acts for a client.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

§ 81-27-3.103. Choice of law governing fiduciary investments.

Any trust institution that maintains a trust office or representative trust office in this state and its affected clients may designate either (i) this state, (ii) a state where affected clients reside or (iii) the state where such trust institution has its principal office as the state whose laws shall govern with respect to the fiduciary investment standards applicable to any written agreement between such trust institution or its client and any other instrument under which the trust institution acts for a client.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

SUBARTICLE C.

DELEGATION; AFFILIATES.

SEC.
81-27-3.201. Delegation and fiduciary responsibility.
81-27-3.202. Affiliates.

§ 81-27-3.201. Delegation and fiduciary responsibility.

(a) Any person acting as a trustee or as any other fiduciary under the laws of this state may delegate any investment, management or administrative function if such person exercises reasonable care, judgment and caution in:

(1) Selecting the delegate, taking into account the delegate's financial standing and reputation;

(2) Establishing the scope and other terms of any delegation; and

(3) Reviewing periodically the delegate's actions in order to monitor overall performance and compliance with the scope and other terms of the delegation.

(b) Notwithstanding any delegation permitted by subsection (a) of this section, any person acting as a trustee or in any other fiduciary capacity under the laws of this state shall retain responsibility for the due performance of any delegated fiduciary function.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

§ 81-27-3.202. Affiliates.

(a) Any person acting as a trustee or in any other fiduciary capacity under Section 81-27-3.201 may hire and compensate, as a delegate, an affiliate of such person if:

(1) Authorized by a trust or fiduciary instrument;

(2) Authorized by court order;

(3) Authorized in writing by each affected client; or

(4) The standards of Section 81-27-3.201 are satisfied.

(b) Fees paid to an affiliate shall be competitive with fees charged by nonaffiliates that provide substantially similar services; however, if an affiliate is used pursuant to subsection (a)(4) of this section, the amount of fees paid to the affiliate shall also be consistent with best execution.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

SUBARTICLE D.

FEES.

SEC.
81-27-3.301. Fee determination.
81-27-3.302. Disclosure of potential conflicts of interest.

§ 81-27-3.301. Fee determination.

The compensation arrangement between a client and any person acting as a trustee or as any other fiduciary pursuant to this chapter shall be at arm's length and any compensation pursuant to such arrangement shall be a reasonable amount with respect to the services rendered.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

§ 81-27-3.302. Disclosure of potential conflicts of interest.

(a) Any company, proposing to act as a trustee or in any other fiduciary capacity pursuant to a written agreement to be entered into with a prospective client after July 1, 1998, which company has any potential or actual conflict of interest which may reasonably be expected to have an impact on the independence or judgment of such trustee or fiduciary, shall deliver a disclosure statement to the prospective client (i) not less than forty-eight (48) hours prior to entering into any written or oral trust or fiduciary agreement with such client or prospective client, or (ii) at the time of entering into any such agreement if the client has a right to terminate the agreement without penalty within three (3) or more business days after entering into the agreement.

(b) The disclosure statement shall contain appropriate information concerning the actual or potential conflict of interest. If such trustee or other fiduciary proposes to delegate any fiduciary function to an affiliate, the nature of the affiliation and whether the trustee or other fiduciary may directly benefit from the delegation shall be disclosed in the disclosure statement.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

SUBARTICLE E.

ACQUISITION OF TRUST ASSETS.

SEC.
81-27-3.401. Purchase of assets of another trust institution.

§ 81-27-3.401. Purchase of assets of another trust institution.

(a) Subject to the provisions of this section, a trust institution may purchase assets of a state trust company or trust-related assets of another trust institution, including the right to control accounts established with the trust institution. Except as otherwise expressly provided by this section or another statute, the purchase of all or part of the assets of the trust institution does not make the purchasing trust institution responsible for any liability or obligation of the selling trust institution that the purchasing trust institution does not expressly assume. Except as otherwise provided by this chapter, this subarticle does not govern or prohibit the purchase by a state trust institution of all or part of the assets of a corporation or other entity that is not a trust institution.

(b) If the acquiring institution is a state bank, a state trust company, an out-of-state trust institution which maintains neither a branch nor a trust office in this state, or a savings association chartered under the laws of this state, an application in the form required by the commissioner must be filed with the commissioner for any acquisition of all or substantially all of (i) the assets of a state trust company or (ii) the trust assets of another trust institution. The commissioner shall investigate the condition of the purchaser and seller and may require the submission of additional information as considered necessary to make an informed decision. The commissioner shall approve the purchase if:

(1) The acquiring trust institution will be solvent and have sufficient capitalization for its business and location;

(2) The acquiring trust institution has complied with all applicable statutes and rules including without limitation any applicable requirements of Article 3 of this chapter;

(3) All fiduciary obligations and liabilities of the parties have been properly discharged or otherwise assumed by the acquiring trust institution;

(4) All conditions imposed by the commissioner have been satisfied or otherwise resolved; and

(5) All fees and costs have been paid.

(c) A purchase requiring an application pursuant to Section 81-27-3.401(b) is effective on the date of approval, unless the purchase agreement provides for, and the commissioner consents to, a different effective date.

(d) The acquiring trust institution shall succeed by operation of law to all of the rights, privileges and obligations of the selling trust institution under each account included in the assets acquired.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

ARTICLE 4.

STATE TRUST COMPANY.

Subarticle A. Organization; General.........81-27-4.101
Subarticle B. Amendment of Articles; Changes in Capital and Surplus...81-27-4.201
Subarticle C. Private Trust Company.........81-27-4.301

SUBARTICLE A.

ORGANIZATION; GENERAL.

SEC.
81-27-4.101. Organization and powers of state trust company.
81-27-4.102. Articles of association of state trust company.
81-27-4.103. Certificate to incorporate and organize.
81-27-4.104. Investigation for state trust company charter.
81-27-4.105. Issuance of charter.
81-27-4.106. Required capital.
81-27-4.107. Application of laws relating to general business corporations.
81-27-4.108. Commissioner hearings; appeals.

§ 81-27-4.101. Organization and powers of state trust company.

(a) Subject to the other provisions of this article, one or more persons may organize and charter a state trust company. A state trust company may perform any act as a fiduciary or engage in any trust business within or without this state.

(b) Subject to Section 81-27-4.107, a state trust company may exercise the powers of a business corporation reasonably necessary or helpful to enable exercise of its specific powers under this chapter.

(c) A state trust company may contribute to community funds, or to charitable, philanthropic, or benevolent instrumentalities conducive to public welfare, amounts that its board considers appropriate and in the interests of the state trust company.

(d) Subject to Section 81-27-5.301, a state trust company may deposit trust funds with itself or an affiliate.

(e) Subject to obtaining any required insurance from the Federal Deposit Insurance Corporation, a state trust company may receive and pay deposits with or without interest, made by agencies of the United States Government or of a state, county, or municipality.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

§ 81-27-4.102. Articles of association of state trust company.

The articles of association of a state trust company must be signed and acknowledged by each organizer and must contain:

(a) The name of the state trust company;

(b) The period of its duration, which may be perpetual;

(c) The powers of the state trust company, which may be stated as:

(1) All powers granted to a state trust company in this state; or

(2) A list of the specific powers that the state trust company chooses and is authorized to exercise;

(d) The aggregate number of shares, or participation shares in the case of a limited liability trust company, that the state trust company will be authorized to issue, the number of classes of shares or participation shares, which may be one or more, the number of shares or participation shares of each class if more than one (1) class, and a statement of the par value of the shares or participation shares of each class or that the shares or participation shares are to be without par value;

(e) If the shares or participation shares are to be divided into classes, the designation of each class and statement of the preferences, limitations, and relative rights of the shares or participation shares of each class, which in the case of a limited trust association may be more fully set forth in the participation agreement;

(f) Any provision limiting or denying to shareholders or participants the preemptive right to acquire additional or treasury shares or participation shares of the state trust company;

(g) Any provision granting the right of shareholders or participants to cumulative voting in the election of directors or managers;

(h) The aggregate amount of consideration to be received for all shares or participation shares initially issued by the state trust company, and a statement that all authorized shares or participation shares have been subscribed and that all subscriptions received provide for the consideration to be fully paid in cash before issuance of the charter;

(i) Any provision consistent with law that the organizers elect to set forth in the articles of association for the regulation of the internal affairs of the state trust company or that is otherwise required by this chapter to be set forth in the articles of association;

(j) The street address of the state trust company's principal office required to be maintained under Section 81-27-2.003; and

(k) The number of directors or managers constituting the initial board, which may not be fewer than five (5) or more than twenty-five (25), and the names and street addresses of the persons who are to serve as directors or managers until the first annual meeting of shareholders or participants or until successor directors or managers have been elected and qualified; or, at the option of the organizers of a limited liability trust company, that will have not fewer than five (5) or more than twenty-five (25) participants, a statement that management is vested in a board comprised of all participants, with management authority vested in each participant in proportion to the participant's contribution to capital as adjusted from time to time to properly reflect any additional contribution, and the names and street addresses of the persons who are to be the initial managing participants.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

§ 81-27-4.103. Certificate to incorporate and organize.

(a) Before any trust company may be organized and formed, the prospective incorporators shall give notice to the commissioner of their desire to engage in trust activities and apply for a certificate of authority to incorporate, and shall at the time file with the commissioner a copy of the proposed articles of incorporation, duly sworn to by one (1) of the prospective incorporators. The commissioner shall promptly give consideration to the application and make an examination of the proposed articles of incorporation to determine if they meet all requirements of law. The commissioner shall then make an investigation to determine if the necessity and other factors mentioned in Article 4 of this chapter requires that the proposed new trust company should be chartered and permitted to operate.

When the commissioner has completed the examination and made his investigation, he shall record his findings in writing and shall draw up his recommendations to the State Board of Banking Review, established in Section 81-3-12. At the request of the chairman, he shall thereupon, in writing, call a meeting of the board to give consideration to his findings and recommendations, such call to be issued at least ten (10) days in advance of the meeting. Such meetings shall be held within one hundred twenty (120) days from the date on which the prospective incorporators gave notice to the commissioner of their desire to engage in trust activities, applied for a certificate of authority to incorporate, and filed with the commissioner a copy of the proposed articles of incorporation. The commissioner shall at the same time give notice of the meeting of the board to the prospective incorporators of the proposed new trust company and to any and all other interested persons and shall extend to them an invitation to be heard in writing or in person by the board.

The board, at its meeting, shall consider the findings and recommendations of the commissioner and shall hear such oral testimony as he may wish to give, and shall also receive information and hear testimony from the prospective organizers of the proposed new trust company and from any and all other interested persons bearing upon the public necessity for the organization and operation of the new trust company.

After considering the record submitted to it by the commissioner and his oral testimony and considering such other information and evidence, either written or oral, which has come before it, the board shall decide if it has before it sufficient information and evidence upon which it can dispose of the application to form the new trust company. If it is determined that evidence and information is not sufficient, then the board shall order the commissioner to secure such additional information and evidence as it may prescribe or shall request from the prospective incorporators and from other interested persons. The board shall thereupon set a date for a future meeting to be held before the expiration of the aforementioned one-hundred-twenty-day time limit and shall give to the prospective incorporators and other interested persons notice of such meeting, and shall recess the meeting then being held until such future date. The board shall have and is vested with the power to compel attendance of witnesses just as is the commissioner or examiner as provided for in Section 81-1-85, and all testimony given before the board shall be taken down and transcribed by a stenographer in the manner prescribed in Section 81-1-87.

If the board, or a majority thereof, determines that it has before it sufficient evidence and information upon which to base a decision, then it shall render a written opinion and decision in the matter within sixty (60) days after the conclusion of the final board hearing. If its decision is favorable, then the board shall order the commissioner to give to such prospective incorporators a certificate under his hand and official seal of the Department of Banking and Consumer Finance authorizing the prospective incorporators to proceed to incorporate and organize as is provided in Section 81-27-4.102.

When a certificate of incorporation is sought in order to effect the acquisition of an insolvent trust company any constraints of time imposed by this subsection shall not apply if the commissioner determines that an emergency exists which requires expedition of the procedure for granting a certificate in order to protect the interests of the public and the interests of the clients of the insolvent trust company.

(b) If the decision of the board, or a majority thereof, is unfavorable to the organization of the proposed new trust company, it shall render a written opinion and decision giving its reason for rejection within sixty (60) days after the conclusion of the final board hearing in the matter, and the commissioner shall so advise the prospective incorporators, giving them a copy of the written decision and opinion of the board. If the prospective incorporators are aggrieved at the unfavorable decision of the board in denying a certificate authorizing them to proceed with the incorporation of the proposed new trust company and the organization thereof, they shall have the right of appeal to the chancery court of the county in which the proposed trust company is to be located, which appeal shall be taken and perfected within sixty (60) days from the date of the denial of such certificate. The denial of the certificate by the board shall be construed as a judicial finding and appealable as such. All such appeals shall be taken, perfected, heard and determined either in termtime or vacation, and such appeals shall be heard and disposed of promptly by the court. Appeals from the board shall be taken and perfected by the filing of a bond in the sum of Two Hundred Fifty Dollars ($250.00), with two (2) sureties, or with a surety company qualified to do business in Mississippi as surety, conditioned to pay the costs of the appeal, the bond to be approved by the clerk of the chancery court, and such bond shall be payable to the state and may be enforced in its name as other judicial bonds filed in the chancery court, and judgment may be entered upon such bonds and process and execution shall issue upon such judgments as provided by law in other cases. Appeals may be taken from the chancery court to the Supreme Court in the manner provided by law. Upon approval of the bond by the clerk of the chancery court the clerk shall give notice to the commissioner of the appeal from the decision of the board, and it thereupon shall be the duty of the commissioner to promptly transmit to the clerk of the chancery court in which the appeal is pending the original or a certified copy of the application, proposed charter of incorporation, and his findings or decision thereon together with the opinion and decision of the board, including a transcript of pleadings and testimony, both oral and documentary, which shall be docketed by the clerk and shall be tried by the court. In perfecting such appeals, the provisions of law respecting notice to reporters and allowance of bills of exception, now or hereafter in force respecting appeals from the chancery court to the Supreme Court shall be applicable thereto. If the prospective incorporators of the proposed new trust company prevail, a decree shall be entered requiring the issuance by the commissioner of the certificate authorizing applicants to incorporate and organize in the same manner as if the application therefor had been approved by the board, and the costs therein incurred shall be paid by the commissioner out of the maintenance fund of the Department of Banking and Consumer Finance. However, if the action of the board is affirmed by the court, a decree shall be entered to that effect taxing costs of the proceedings to the applicants. The commissioner or the applicants shall have the right of appeal from the decision of the chancery court. During the time the cause is pending in the office of the commissioner or before the board or the court, the commissioner shall not issue a certificate to a subsequent applicant to incorporate and organize a new trust company or authorize any trust company then existing to establish a branch within the area in which the proposed new trust company is to be domiciled, and neither shall he consent to the removal of the domicile of an existing trust company from another place into the area where the proposed new trust company will be domiciled. A cause shall not be considered as pending in the office of the commissioner or before the board if the prospective incorporators or their representative have only given notice to the commissioner of their desire to engage in trust activities and apply for a certificate of authority to incorporate, but have not filed with the commissioner a copy of the proposed articles of incorporation and other documents required by statute or administrative regulation.

If the decision of the board, or a majority thereof, is favorable to the organization of the proposed trust company, it shall in like manner as above render a written opinion and decision within sixty (60) days after the conclusion of the final board hearing on the matter, and an appeal in the manner herein set forth shall be available to any interested organizations, person or persons who have participated in the proceedings and feel aggrieved by the decision of the board.

(c) When a trust company has been incorporated and the capital stock thereof has been paid in full, the incorporators shall notify the commissioner of such fact, whereupon the commissioner himself or through an examiner shall make a special examination of the proposed new trust company and, finding the capital stock to have been paid in full, he shall under his hand and seal of the Department of Banking and Consumer Finance issue to the trust company a certificate authorizing it to commence business, and when such business has been commenced the trust company shall notify the commissioner to that effect. Upon completion of such special examination, the trust company shall pay to the Department of Banking and Consumer Finance as an assessment an amount sufficient to reimburse for the actual costs and expenses incurred during such special examination. The commissioner or examiner shall give a receipt therefor in duplicate, and the assessment shall be turned over by the Department of Banking and Consumer Finance to the State Treasurer for credit to the maintenance fund of the Department of Banking and Consumer Finance. The proposed new trust company shall not transact any business except as is necessarily preliminary to its incorporation and organization until it has been authorized by the commissioner to begin business. However, if the board rejects any application for a certificate to incorporate and organize, all costs incurred by the board in making a survey or holding a hearing on such application shall be borne by the petitioners.

(d) Notwithstanding the foregoing and any other provision of law to the contrary, if a trust company has not been established and is not in operation within two (2) years from the date of the certificate to incorporate and organize such trust company or within two (2) years from the date upon which any appellate litigation with respect to such certificate has been concluded, the certificate shall expire. However, the State Board of Banking Review for good cause shown may extend the two-year period for not more than two (2) times for periods not exceeding six (6) months each. This provision shall in no way affect certificates issued before July 1, 1998.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

§ 81-27-4.104. Investigation for state trust company charter.

(a) The commissioner shall investigate the proof that one or more viable markets exist within or outside of this state that may be served in a profitable manner by the establishment of the proposed state trust company. In making such a determination, the commissioner shall (i) examine the business plan which shall be submitted as part of the application for a state trust company charter and (ii) consider:

(1) The market or markets to be served;

(2) Whether the proposed organizational and capital structure and amount of initial capitalization is adequate for the proposed business and location;

(3) Whether the anticipated volume and nature of business indicates a reasonable probability of success and profitability based on the market sought to be served;

(4) Whether the proposed officers, directors, and managers, or managing participants, as a group, have sufficient fiduciary experience, ability, standing, competence, trustworthiness, and integrity to justify a belief that

the proposed state trust company will operate in compliance with law and that success of the proposed state trust company is probable;

(5) Whether each principal shareholder or participant has sufficient experience, ability, standing, competence, trustworthiness, and integrity to justify a belief that the proposed state trust company will be free from improper or unlawful influence or interference with respect to the state trust company's operation in compliance with law; and

(6) Whether the organizers are acting in good faith.

(b) The failure of an applicant to furnish required information, data, opinions of counsel, other material or the required fee is considered an abandonment of the application.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

§ 81-27-4.105. Issuance of charter.

A state trust company may not engage in the trust business until it receives its charter from the commissioner. The commissioner may not deliver the charter until the state trust company has:

(1) Received cash or marketable securities in at least the full amount of required capital from subscriptions for the issuance of shares or participation shares;

(2) Elected or qualified the initial officers and directors or managers, as appropriate, named in the application for charter or other officers and directors or managers approved by the commissioner; and

(3) Complied with all other requirements of this chapter relative to the organization of a state trust company.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

§ 81-27-4.106. Required capital.

(a) The commissioner may not issue a charter to a state trust company having required capital of less than Two Million Dollars ($2,000,000.00) except as provided in subsection (b) of this section.

(b) The commissioner may require additional capital for a proposed or existing state trust company or, on application in the exercise of discretion consistent with protecting safety and soundness, reduce the amount of minimum capital required for a proposed or existing state trust company, if the commissioner finds the condition and operations of an existing state trust company or the proposed scope or type of operations of a proposed state trust company requires additional, or permits reduced, capital consistent with the safety and soundness of the state trust company. The safety and soundness factors to be considered by the commissioner in the exercise of such discretion include but are not limited to,

(1) The nature and type of business conducted;

(2) The nature and degree of liquidity in assets held in a corporate capacity;

(3) The amount of fiduciary assets under management;

(4) The type of fiduciary assets held and the depository of such assets;

(5) The complexity of fiduciary duties and degree of discretion undertaken;

(6) The competence and experience of management;

(7) The extent and adequacy of internal controls;

(8) The presence or absence of annual unqualified audits by an independent certified public accountant;

(9) The reasonableness of business plans for retaining or acquiring additional capital; and

(10) The existence and adequacy of insurance obtained or held by the trust company for the purpose of protecting its clients, beneficiaries and grantors.

(c) The proposed effective date of an order requiring an existing state trust company to increase its capital must be stated in the order as on or after the twenty-first day after the date the proposed order is mailed or delivered. Unless the state trust company requests a hearing before the commissioner in writing before the effective date of the proposed order, the order becomes effective and is final and nonappealable. This subsection does not prohibit an application to reduce capital requirements of a proposed or an existing state trust company under subsection (b) of this section.

(d) Subject to subsection (b) of this section and Section 81-27-4.301, a state trust company to which the commissioner issues a charter shall at all times maintain capital in at least the amount required under subsection (a) of this section, plus any additional amount or less any reduction the commissioner directs under subsection (b) of this section.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

§ 81-27-4.107. Application of laws relating to general business corporations.

(a) The Mississippi Business Corporation Act applies to a trust company to the extent not inconsistent with this chapter or the proper business of a trust company, except that:

(1) A reference to the Secretary of State means the commissioner unless the context requires otherwise; and

(2) The right of shareholders or participants to cumulative voting in the election of directors or managers exists only if granted by the state trust company's articles of association.

(b) Unless expressly authorized by this chapter or a rule or regulation of the commissioner, a trust company may not take an action authorized by the Mississippi Business Corporation Act regarding its corporate status, capital structure, or a matter of corporate governance, of the type for which the Mississippi Business Corporation Act would require a filing with the Secretary of State if the trust company were a business corporation, without first submitting the filing to the commissioner for the same purposes for which it otherwise would be required to be submitted to the Secretary of State.

(c) The commissioner may adopt rules or regulations to limit or refine the applicability of subsection (a) of this section to a trust company or to alter or supplement the procedures and requirements of the Mississippi Business Corporation Act applicable to an action taken under this article.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

Cross References — Mississippi Business Corporation Act, see § 79-4-1.01 et seq.

§ 81-27-4.108. Commissioner hearings; appeals.

(a) This section does not grant a right to hearing to a person that is not otherwise granted by governing law.

(b) The commissioner may convene a hearing to receive evidence and argument regarding any matter before the commissioner for decision or review under this chapter. The hearing shall be conducted in the same manner as other hearings conducted by the commissioner.

(c) A hearing before the commissioner that is required or authorized by law may be conducted by a hearing officer on behalf of the commissioner. A matter made confidential by law must be considered by the commissioner in a closed hearing.

(d) Except as expressly provided otherwise by this chapter, a person affected by a final decision or order of the commissioner made under this chapter after a hearing may appeal the final decision or order to the Chancery Court of the First Judicial District of Hinds County, Mississippi. A petition for appeal filed in the district court does not stay or vacate the appealed decision or order unless the court, after notice and hearing, expressly stays or vacates the decision or order.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

SUBARTICLE B.

AMENDMENT OF ARTICLES; CHANGES IN CAPITAL AND SURPLUS.

SEC.
81-27-4.201. Amendment of state trust company articles of association.
81-27-4.202. Establishing a series of shares or participation shares.
81-27-4.203. Change in outstanding capital and surplus.
81-27-4.204. Capital notes or debentures.

§ 81-27-4.201. Amendment of state trust company articles of association.

(a) A state trust company that has been granted a charter under Section 81-27-4.105 or a predecessor statute may amend or restate its articles of association for any lawful purpose, including the creation of authorized but unissued shares or participation shares in one or more classes or series.

(b) An amendment authorizing the issuance of shares or participation shares in series must contain:

(1) The designation of each series and of any variations in the preferences, limitations, and relative rights among series to the extent that the preferences, limitations, and relative rights are to be established in the articles of association; and

(2) A statement of any authority to be vested in the board to establish series and determine the preferences, limitations, and relative rights of each series.

(c) A limited liability trust company may not amend its articles of association to extend its period of existence for a perpetual period or for any period of years, unless the period of existence is expressly contingent on those events resulting in dissolution of the limited liability trust company under subarticle B of Article 8 of this chapter.

(d) Amendment or restatement of the articles of association of a state trust company and approval of the board and shareholders or participants must be made or obtained in accordance with provisions of the Mississippi Business Corporation Act for the amendment or restatement of articles of incorporation except as otherwise provided by this chapter or rules or regulations adopted under this chapter. The original and one (1) copy of the articles of amendment or restated articles of association must be filed with the commissioner for approval. Unless the submission presents novel or unusual questions, the commissioner shall approve or reject the amendment or restatement not later than the thirty-first day after the date the commissioner considers the submission informationally complete and accepted for filing. The commissioner may require the submission of additional information as considered necessary to an informed decision to approve or reject any amendment or restatement or articles of association under this section.

(e) If the commissioner thinks that the amendment or restatement conforms to law and any conditions imposed by the commissioner, and any required filing fee has been paid, the commissioner shall:

(1) Endorse the face of the original and copy with the date of approval and the word "Approved";

(2) File the original in the department's records; and

(3) Deliver a certified copy of the amendment or restatement to the state trust company.

(f) An amendment or restatement, if approved, takes effect on the date of approval, unless the amendment or restatement provides for a different effective date.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

§ 81-27-4.202. Establishing a series of shares or participation shares.

(a) If the articles of association expressly give the board authority to establish series and determine the preferences, limitations, and relative rights of each series, the board may do so only on compliance with this section and any rules adopted under this article.

(b) A series of shares or participation shares may be established in the manner provided by the provisions of the Mississippi Business Corporation Act as if the state trust company were a domestic corporation, but the shares or participation shares of the series may not be issued and sold except upon compliance with this section. The state trust company shall file the original and one (1) copy of the statement of action required by the Mississippi Business Corporation Act with the commissioner. Unless the submission presents novel or unusual questions, the commissioner shall approve or reject the series not later than the thirty-first day after the date the commissioner considers the submission informationally complete and accepted for filing. The commissioner may require the submission of additional information as considered necessary to an informed decision.

(c) If the commissioner finds that the interests of the clients and creditors of the state trust company will not be adversely affected by the series, that the series otherwise conforms to law and any conditions imposed by the commissioner, and that any required filing fee has been paid, the commissioner shall:

(1) Endorse the face of the original and copy of the statement with the date of approval and the word "Approved";

(2) File the original in the department's records; and

(3) Deliver a certified copy of the statement to the state trust company.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

§ 81-27-4.203. Change in outstanding capital and surplus.

(a) A state trust company may not reduce or increase its outstanding capital through dividend, redemption, issuance of shares or participation shares, or otherwise, without the prior approval of the commissioner, except as permitted by this section or rules adopted under this article.

(b) Unless otherwise restricted by rules or regulations, prior approval is not required for an increase in capital accomplished through:

(1) Issuance of shares of common stock or their equivalent in participation shares for cash;

(2) Declaration and payment of pro rata share dividends as defined in the Mississippi Business Corporation Act; or

(3) Adoption by the board of a resolution directing that all or part of undivided profits be transferred to capital.

(c) Prior approval is not required for a decrease in surplus caused by incurred losses in excess of undivided profits.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

§ 81-27-4.204. Capital notes or debentures.

(a) With the prior written approval of the commissioner, any state trust company may, at any time, through action of its board, and without requiring action of its shareholders or participants, issue and sell its capital notes or debentures, which must be subordinate to the claims or depositories and may be subordinate to other claims, including the claims of other creditors or classes of creditors or the shareholders or participants.

(b) Capital notes or debentures may be convertible into shares or participation shares of any class or series. The issuance and sale of convertible capital notes or debentures are subject to satisfaction of preemptive rights, if any, to the extent provided by law.

(c) Without the prior written approval of the commissioner, interest due or principal repayable on outstanding capital notes or debentures may not be paid by a state trust company when the state trust company is in hazardous condition or insolvent, as determined by the commissioner, or to the extent that payment will cause the state trust company to be in hazardous condition or insolvent.

(d) The amount of any outstanding capital notes or debentures that meet the requirements of this section and that are subordinated to unsecured creditors of the state trust company may be included in equity capital of the state trust company for purposes of determining hazardous condition or insolvency, and for such other purposes provided by rules or regulations adopted under this article.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

SUBARTICLE C.

PRIVATE TRUST COMPANY.

SEC.
81-27-4.301. Private trust company.
81-27-4.302. Requirements to apply for and maintain status as a private trust company.
81-27-4.303. Conversion to public trust company.

§ 81-27-4.301. Private trust company.

(a) A private trust company engaging in the trust business in this state shall comply with each and every provision of this chapter applicable to a trust company unless expressly exempted therefrom in writing by the commissioner pursuant to this section, by rule or regulation adopted by the commissioner or under a predecessor statute.

(b) A private trust company or proposed private trust company may request in writing that it be exempted from specified provisions of Sections 81-27-2.105(b), 81-27-4.102(k), 81-27-4.104(a), 81-27-4.106(a), 81-27-5.002, 81-27-5.101(b), (c) and (d), 81-27-5.105 and 81-27-5.201. The commissioner may grant the exemption in whole or in part if the commissioner finds that the private trust company does not and will not transact business with the general public. For purposes of this section:

(1) "Transact business with the general public" means any sales, solicitations, arrangements, agreements, or transactions to provide trust or

other business services, whether or not for a fee, commission, or any other type of remuneration, with any client that is not a family member or a sole proprietorship, partnership, joint venture, association, trust, estate, business trust, or other company that is not one hundred percent (100%) owned by one or more family members;

(2) "Family member" means any individual who is related within the fourth degree of affinity or consanguinity to an individual or individuals who control a private trust company or which is controlled by one or more trusts or charitable organizations established by such individual or individuals; and

(3) All individuals who control a private trust company or establish trusts or charitable organizations controlling such private trust company must be related within the second degree of affinity or consanguinity.

(c) At the expense of the private trust company, the commissioner may examine or investigate the private trust company in connection with an application for exemption. Unless the application presents novel or unusual questions, the commissioner shall approve the application for exemption or set the application for hearing not later than the sixty-first day after the date the commissioner considers the application complete and accepted for filing. The commissioner may require the submission of additional information as considered necessary to an informed decision.

(d) Any exemption granted under this section may be made subject to conditions or limitations imposed by the commissioner consistent with this chapter.

(e) The commissioner may adopt rules and regulations defining other circumstances that do not constitute transaction of business with the public, specifying the provisions of this chapter that are subject to an exemption request, and establishing procedures and requirements for obtaining, maintaining, or revoking exempt status.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

§ 81-27-4.302. Requirements to apply for and maintain status as a private trust company.

(a) Application.

(1) A private trust company requesting an exemption from the provisions of this chapter pursuant to Section 81-27-4.301 shall file an application with the commissioner containing the following:

(A) A nonrefundable application fee as set by the commissioner;

(B) A detailed statement under oath showing the private trust company's assets and liabilities as of the end of the month previous to the filing of the application;

(C) A statement under oath of the reason for requesting the exemption;

(D) A statement under oath that the private trust company is not currently transacting business with the public and that the company will not conduct business with the public without the prior written permission of the commissioner;

(E) The current street mailing address and telephone number of the physical location in this state at which the private trust company will maintain its books and records, together with a statement under oath that the address given is true and correct and is not a United States Postal Service post office box or a private mail box, postal box, or mail drop; and

(F) Listing of the specific provisions of the chapter for which the request for exemption is made.

(2) The commissioner shall not approve a private trust company exemption unless the application is completed as required in paragraph (1) of this subsection.

(b) Requirements.

(1) To maintain status as an exempt private trust company under this chapter, the private trust company shall comply with the following:

(A) An exempt private trust company shall not transact business with the public.

(B) An exempt private trust company shall file an annual certification that it is maintaining the conditions and limitations of its exempt status. This annual certification shall be filed on a form provided by the commissioner and be accompanied by a fee determined by the commissioner. The annual certification shall be filed on or before June 30 of each year. No annual certification shall be valid unless it bears an acknowledgment stamped by the department. The department shall have thirty (30) days from the date of receipt to return a copy of the acknowledged annual certification to the private trust company. The burden shall be on the exempt private trust company to notify the department of any failure to return an acknowledged copy of any annual certification within the thirty-day period. The commissioner may examine or investigate the private state trust company periodically as necessary to verify the certification.

(C) An exempt private trust company shall comply with the principal office provisions of Section 81-27-2.003 and with the address and telephone requirements of subsection (a)(1)(E) of this section.

(D) The exempt private trust company shall pay the corporation franchise tax under Section 27-13-1 et seq.

(c) Change of control. Control of an exempt private trust company may not be transferred or sold with exempt status. In any change of control, the acquiring control person must comply with the provisions of this chapter and the exempt status of the private trust company shall automatically terminate upon the effective date of the transfer. A separate application for exempt status must be filed if the acquiring person wishes to obtain or continue an exemption pursuant to this section.

(d) Authority to revoke. The commissioner shall have authority to revoke the exempt status of a private trust company in the following circumstances:

(1) The exempt private trust company makes a false statement under oath on any document required to be filed by the chapter or by any rule or regulation promulgated by the commissioner; or

(2) The exempt private trust company fails to submit to an examination as required by Section 81-27-2.003; or

(3) The exempt private trust company withholds requested information from the commissioner; or

(4) The exempt private trust company violates any provision of this section applicable to exempt private trust companies.

(e) Notification of revocation of exemption. If the commissioner determines from examination or other credible evidence that an exempt private trust company has violated any of the requirements of this section, the commissioner may by personal delivery or registered or certified mail, return receipt requested, notify the exempt private trust company in writing that the private trust company's exempt status has been revoked. The notification must state grounds for the revocation with reasonable certainty. The notice must state its effective date, which may not be before the fifth day after the date the notification is mailed or delivered. The revocation takes effect for the private trust company if the private trust company does not request a hearing in writing before the effective date. After taking effect the revocation is final and nonappealable as to that private trust company, and the private trust company shall be subject to all of the requirements and provisions of the act applicable to nonexempt state trust companies.

(f) Compliance period. A private trust company shall have five (5) calendar days after the revocation is effective to comply with the provisions of this chapter from which it was formerly exempt. If, however, the commissioner determines, at the time of revocation, that the private trust company has been engaging in or attempting to engage in acts intended or designed to deceive or defraud the public, the commissioner may shorten or eliminate, in the commissioner's sole discretion, the five (5) calendar days compliance period.

(g) Remedies for failure to comply. If the private trust company does not comply with all of the provisions of this chapter, including such capitalization requirements as have been determined by the commissioner as necessary to assure the safety and soundness of the private trust company, within the prescribed time period, the commissioner may:

(1) Institute any action or remedy prescribed by this chapter, or any applicable rule or regulation, or

(2) Refer the private trust company to the Attorney General for institution of a quo warranto proceeding to revoke the charter.

(h) Private trust company under prior law. A private trust company that currently has a valid exemption under a predecessor statute is considered exempt under this chapter.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

§ 81-27-4.303. Conversion to public trust company.

(a) A private trust company may terminate its status as a private trust company and commence transacting business with the general public. A private trust company desiring to commence transacting business with the general public shall file a notice on a form prescribed by the commissioner, which shall set forth the name of the private trust company and an acknowledgement that any exemption granted or otherwise applicable to the private trust company pursuant to Section 81-27-4.301 shall cease to apply on the effective date of such notice, furnish a copy of the resolution adopted by the board authorizing the private trust company to commence transacting business with the general public, and pay the filing fee, if any, prescribed by the commissioner.

(b) The notificant may commence transacting business with the general public on the thirty-first day after the date the commissioner receives the notice, unless the commissioner specifies an earlier or later date.

(c) The thirty-day period of review may be extended by the commissioner on determination that the written notice raises issues that require additional information or additional time for analysis. If the period for review is extended, the notificant may commence transacting business with the public only on prior written approval by the commissioner.

(d) The commissioner may deny approval of the notice of the private trust company to commence transacting business with the general public if the commissioner finds that the notificant lacks sufficient financial resources to undertake the proposed expansion without adversely affecting its safety or soundness or that the proposed transacting of business of the general public would be contrary to the public interest or if the commissioner determines that the notificant will not within a reasonable period be in compliance with any provision of this chapter from which the notificant had been previously exempted pursuant to Section 81-27-4.301.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

ARTICLE 5.

INVESTMENTS, LOANS AND DEPOSITS.

Subarticle A. Acquisition and Ownership of State Trust Company Facilities and Other Real Estate....81-27-5.001
Subarticle B. State Trust Company Investments....81-27-5.101
Subarticle C. Loans....81-27-5.201
Subarticle D. Trust Deposits....81-27-5.301
Subarticle E. Liabilities and Pledge of Assets....81-27-5.401

SUBARTICLE A.

ACQUISITION AND OWNERSHIP OF STATE TRUST COMPANY FACILITIES AND OTHER REAL ESTATE.

SEC.
81-27-5.001. Investment in state trust company facilities.
81-27-5.002. Other real estate.

§ 81-27-5.001. Investment in state trust company facilities.

(a) In this subarticle, "state trust company facility" means real estate, including an improvement, owned, or leased to the extent the lease or the leasehold improvements are capitalized, by a state trust company for the purpose of:

(1) Providing space for state trust company employees to perform their duties and space for parking by state trust company employees and customers;

(2) Conducting trust business, including meeting the reasonable needs and convenience of the state trust company's customers, computer operations, document and other item processing, maintenance and record retention and storage;

(3) Holding, improving, and occupying as an incident to future expansion of the state trust company's facilities; or

(4) Conducting another activity authorized by rules or regulations adopted under this chapter.

(b) Without the prior written approval of the commissioner, a state trust company may not directly or indirectly invest an amount in excess of its restricted capital in state trust company facilities, furniture, fixtures, and equipment. Except as otherwise provided by rules or regulations adopted under this chapter, in computing this limitation a state trust company:

(1) Shall include:

(A) Its direct investment in state trust company facilities;

(B) Any investment in equity or investment securities of a company holding title to a facility used by the state trust company for the purposes specified by subsection (a) of this section;

(C) Any loan made by the state trust company to or on the security of equity or investment securities issued by a company holding title to a facility used by the state trust company; and

(D) Any indebtedness incurred on state trust company facilities by a company:

(i) That holds title to the facility;

(ii) That is an affiliate of the state trust company; and

(iii) In which the state trust company is invested in the manner described by subparagraph (B) or (C) of this paragraph (1); and

(2) May exclude an amount included under paragraphs (1)(B) through (D) of this subsection to the extent any lease of a facility from the company

holding title to the facility is capitalized on the books of the state trust company.

(c) Real estate acquired under subsection (a)(3) of this section and not improved and occupied by the state trust company ceases to be a state trust company facility on the third anniversary of the date of its acquisition, unless the commissioner on application grants written approval to further delay in the improvement and occupation of the property by the state trust company.

(d) A state trust company shall comply with generally accepted accounting principles, consistently applied, in accounting for its investment in and depreciation of state trust company facilities, furniture, fixtures, and equipment.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

§ 81-27-5.002. Other real estate.

(a) A state trust company may not acquire real estate except:

(1) As permitted by Section 81-27-5.001 or as otherwise provided by this chapter, including rules or regulations adopted under this chapter;

(2) If necessary to avoid or minimize a loss on a loan or investment previously made in good faith; or

(3) With the prior written approval of the commissioner.

(b) To the extent reasonably necessary to avoid or minimize loss on real estate acquired as permitted by subsection (a) of this section, a state trust company may exchange real estate for other real estate or personal property, invest additional funds in or improve real estate acquired under this subsection or subsection (a) of this section, or acquire additional real estate.

(c) A state trust company shall dispose of any real estate subject to subsection (a)(1) and (2) of this section not later than:

(1) The fifth anniversary of the date:

(A) It was acquired, except as otherwise provided by rules or regulations adopted under this chapter; or

(B) It ceases to be used as a state trust company facility; or

(2) The third anniversary of the date it ceases to be a state trust company facility as provided by Section 81-27-5.001(c).

(d) The commissioner on application may grant one or more extensions of time for disposing of real estate if the commissioner determines that:

(1) The state trust company has made a good faith effort to dispose of the real estate; or

(2) Disposal of the real estate would be detrimental to the state trust company.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

SUBARTICLE B.

STATE TRUST COMPANY INVESTMENTS.

SEC.
81-27-5.101. Securities.
81-27-5.102. Transactions in state trust company shares or participation shares.
81-27-5.103. Subsidiaries.
81-27-5.104. Mutual funds.
81-27-5.105. Engaging in commerce prohibited.

§ 81-27-5.101. Securities.

(a) A state trust company may invest its corporate funds in any type or character of equity or investment securities subject to the limitations provided by this section.

(b) Unless the commissioner approves maintenance of a lesser amount in writing, a state trust company must invest and maintain an amount equal to at least forty percent (40%) of the state trust company's capital under Section 81-27-4.106 in unencumbered cash, cash equivalents, and readily marketable securities.

(c) Subject to subsection (d) of this section, the total investment in equity and investment securities of any one issuer, obligor, or maker, held by the state trust company for its own account, may not exceed an amount equal to fifteen percent (15%) of the state trust company's capital. The commissioner may authorize investments in excess of this limitation on written application if the commissioner concludes that:

(1) The excess investment is not prohibited by other applicable law; and

(2) The safety and soundness of the requesting state trust company is not adversely affected.

(d) Notwithstanding subsection (c) of this section, a state trust company may purchase for its own account, without limitation and subject only to the exercise of prudent judgment:

(1) Bonds and other legally created general obligations of a state, an agency or political subdivision of a state, the United States, or an agency or instrumentality of the United States;

(2) An investment security that this state, an agency or political subdivision of this state, the United States, or an agency or instrumentality of the United States has unconditionally agreed to purchase, insure, or guarantee;

(3) Securities that are offered and sold under 15 USCS Section 77d(5);

(4) Mortgage related securities as defined in 15 USCS Section 78c(a), except that notwithstanding Section 347 of the Riegle Community Development and Regulatory Improvement Act of 1994, a note or obligation that is secured by a first lien on one or more parcels of real estate on which is located one or more commercial structures is subject to the limitations of subsection (c) of this section;

(5) Investment securities issued or guaranteed by the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Agricultural Mortgage Association, or the Federal Farm Credit Banks Funding Corporation;

(6) Investment securities issued or guaranteed by the North American Development Bank; or

(7) Securities issued by a Federal Home Loan Bank.

(e) Notwithstanding 15 USCS Section 77r-1(c), subsection (c) of this section applies to investments in small business related securities as defined by 15 USCS Section 78c(a).

(f) The commissioner may adopt rules to establish limits, requirements, or exemptions other than those specified by this section for particular classes or categories of investment, or limit or expand investment authority for state trust companies for particular classes or categories of securities or other property.

SOURCES: Laws, 1998, ch. 437, §§ 1, eff from and after July 1, 1998.

§ 81-27-5.102. Transactions in state trust company shares or participation shares.

(a) A state trust company may acquire its own shares or participation shares if:

(1) The amount of its undivided profits is sufficient to fully absorb the acquisition of the shares or participation shares under regulatory accounting principles; or

(2) The state trust company obtains the prior written approval of the commissioner.

(b) A state trust company may acquire a lien upon its own shares or participation shares if:

(1) The aggregate amount of indebtedness so secured is less than the amount of the state trust company's undivided profits; or

(2) The state trust company obtains the prior written approval of the commissioner.

(c) Except with the prior written approval of the commissioner:

(1) The state trust company may not hold its own shares or participation shares as treasury stock for more than two (2) years; and

(2) A lien acquired under this section may not by its original terms extend for more than two (2) years.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

§ 81-27-5.103. Subsidiaries.

(a) Except as otherwise provided by this article or rules or regulations adopted under this article, a state trust company may acquire or establish a subsidiary to conduct any activity that may lawfully be conducted through the form of organization chosen for the subsidiary.

(b) A state trust company may not invest more than an amount equal to fifteen percent (15%) of its capital in a single subsidiary and may not invest an amount in excess of its restricted capital in all subsidiaries. The amount of a state trust company's investment in a subsidiary is the total amount of the state trust company's investment in equity or investment securities issued by its subsidiary and any loans and extensions of credit from the state trust company to its subsidiary. The commissioner may authorize investments in excess of these limitations on written application if the commissioner concludes that:

(1) The excess investment is not prohibited by other applicable law; and

(2) The safety and soundness of the requesting state trust company is not adversely affected.

(c) A state trust company that intends to acquire, establish, or perform new activities through a subsidiary shall submit a letter to the commissioner describing in detail the proposed activities of the subsidiary.

(d) The state trust company may acquire or establish a subsidiary or begin performing new activities in an existing subsidiary on the thirty-first day after the date the commissioner receives the state trust company's letter, unless the commissioner specifies an earlier or later date. The commissioner may extend the thirty-day period of review on a determination that the state trust company's letter raises issues that require additional information or additional time for analysis. If the period of review is extended, the state trust company may acquire or establish the subsidiary, or perform new activities in an existing subsidiary, only on prior written approval of the commissioner.

(e) A subsidiary of a state trust company is subject to regulation by the commissioner to the extent provided by this article or rules or regulations adopted under this article. In the absence of limiting rules or regulations, the commissioner may regulate a subsidiary as if it were a state trust company.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

§ 81-27-5.104. Mutual funds.

(a) A state trust company may invest for its own account in equity securities of an investment company registered under the Investment Company Act of 1940 (15 USCS Section 80a-1 et seq.) and the Securities Act of 1933 (15 USCS Section 77a et seq.) if the portfolio of the investment company consists wholly of investments in which the state trust company could invest directly for its own account.

(b) If the portfolio of an investment company described in subsection (a) of this section consists wholly of investments in which the state trust company could invest directly without limitation under Section 81-27-5.101(d), the state trust company may invest in the investment company without limitation.

(c) If the portfolio of an investment company described in subsection (a) of this section contains any investment that is subject to the limits of Section

81-27-5.101(c), the state trust company may invest in the investment company not more than an amount equal to fifteen percent (15%) of the state trust company's capital. This provision does not apply to a money market fund.

(d) In evaluating investment limits under this article, a state trust company may not be required to combine:

(1) The state trust company's pro rata share of the securities of an issuer in the portfolio of an investment company with the state trust company's pro rata share of the securities of that issuer held by another investment company in which the state trust company has invested; or

(2) The state trust company's own direct investment in the securities of an issuer with the state trust company's pro rata share of the securities of that issuer held by each investment company in which the state trust company has invested under this section.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

§ 81-27-5.105. Engaging in commerce prohibited.

Except as otherwise provided by this chapter or rules adopted under this chapter, a state trust company may not invest its funds in trade or commerce by buying, selling, or otherwise dealing in goods or by owning or operating a business not part of the state trust business, except as necessary to fulfill a fiduciary obligation to a client.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

SUBARTICLE C.

LOANS.

SEC.
81-27-5.201. Lending limits.
81-27-5.202. Lease financing transactions.

§ 81-27-5.201. Lending limits.

(a) A state trust company's total outstanding loans and extensions of credit to a person other than an insider may not exceed an amount equal to fifteen percent (15%) of the state trust company's capital.

(b) The aggregate loans and extensions of credit outstanding at any time to insiders of the state trust company may not exceed an amount equal to fifteen percent (15%) of the state trust company's capital. All covered transactions between an insider and a state trust company must be engaged in only on terms and under circumstances, including credit standards, that are substantially the same as those for comparable transactions with a noninsider.

(c) The commissioner may adopt rules or regulations to administer and carry out this section, including rules to establish limits, requirements, or exemptions other than those specified by this section for particular classes or categories of loans or extensions of credit, and establish collective lending and investment limits.

(d) The commissioner may determine whether a loan or extension of credit putatively made to a person will be attributed to another person for purposes of this section.

(e) A state trust company may not lend trust deposits, except that a trustee may make a loan to a beneficiary of the trust if the loan is expressly authorized or directed by the instrument or transaction establishing the trust.

(f) An officer, director, manager, managing participant, or employee of a state trust company who approves or participates in the approval of a loan with actual knowledge that the loan violates this section is jointly and severally liable to the state trust company for the lesser of the amount by which the loan exceeded applicable lending limits or the state trust company's actual loss and remains liable for that amount until the loan and all prior indebtedness of the borrower to the state trust company has been fully repaid. The state trust company may initiate a proceeding to collect an amount due under this subsection at any time before the date the borrower defaults on the subject loan or any prior indebtedness or before the fourth anniversary of that date. A person that is liable for and pays amounts to the state trust company under this subsection is entitled to an assignment of the state trust company's claim against the borrower to the extent of the payments. For purposes of this subsection, an officer, director, manager, managing participant, or employee of a state trust company is presumed to know the amount of the state trust company's lending limit under subsection (a) of this section and the amount of the borrower's aggregate outstanding indebtedness to the state trust company immediately before a new loan or extension of credit to that borrower.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

§ 81-27-5.202. Lease financing transactions.

(a) Subject to rules or regulations adopted under this chapter, a state trust company may become the owner and lessor of tangible personal property for lease financing transactions on a net lease basis on the specific request and for the use of a client. Without the written approval of the commissioner to continue holding property acquired for leasing purposes under this subsection, the state trust company may not hold the property more than six (6) months after the date of expiration of the original or any extended or renewed lease period agreed to by the client for whom the property was acquired or by a subsequent lessee.

(b) Rental payments received by the trust company in a lease financing transaction under this section are considered to be rent and not interest or compensation for the use, forbearance, or detention of money. However, a lease financing transaction is considered to be a loan or extension of credit for purposes of Section 81-27-5.201.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

SUBARTICLE D.

TRUST DEPOSITS.

SEC.
81-27-5.301. Trust deposits.
81-27-5.302. Common investment funds.

§ 81-27-5.301. Trust deposits.

(a) A state trust company may deposit trust funds with itself as an investment if authorized by the settlor or the beneficiary provided:

(1) It maintains as security for the deposits a separate fund of securities, legal for trust investments, under control of a federal reserve bank or a clearing corporation, as defined by Section 75-8-102, either in this state or elsewhere;

(2) The total market value of the security is at all times at least equal to the amount of the deposit;

(3) The separate fund is designated as such; and

(4) The separate fund is maintained under the control of another trust institution, bank or government agency.

(b) A state trust company may make periodic withdrawals from or additions to the securities fund required by subsection (a) of this section as long as the required value is maintained. Income from the securities in the fund belongs to the state trust company.

(c) Security for a deposit under this section is not required for a deposit under subsection (a) of this section to the extent the deposit is insured by the Federal Deposit Insurance Corporation or its successor.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

§ 81-27-5.302. Common investment funds.

(a) A state trust company may establish common trust funds to provide investment to itself as a fiduciary.

(b) The commissioner may adopt rules to administer and carry out this section, including but not limited to rules to establish investment and participation limitations, disclosure of fees, audit requirements, limit or expand investment authority for particular classes or categories of securities or other property, advertising, exemptions, and other requirements that may be necessary to carry out this section.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

SUBARTICLE E.

LIABILITIES AND PLEDGE OF ASSETS.

SEC.
81-27-5.401. Borrowing limit.

81-27-5.402. Pledge of asset.

§ 81-27-5.401. Borrowing limit.

Except with the prior written approval of the commissioner, a state trust company may not have liabilities outstanding exceeding an amount equal to five (5) times its capital.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

§ 81-27-5.402. Pledge of asset.

A state trust company may not pledge or create a lien on any of its assets except to secure the repayment of money borrowed or as specifically authorized or required by Section 81-27-5.301, or by rules or regulations adopted under this article. An act, deed, conveyance, pledge, or contract in violation of this section is void.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

ARTICLE 6.

ADDITIONAL DEFINITIONS; OWNERSHIP; GOVERNANCE; MERGERS.

Subarticle A. Additional Definitions 81-27-6.001
Subarticle B. Transfer of Ownership Interest in State Trust Company. . .81-27-6.101
Subarticle C. Board and Officers 81-27-6.201
Subarticle D. Special Provisions for Limited Liability Trust Companies. .81-27-6.301
Subarticle E. Merger, Consolidation, Transfer of Assets 81-27-6.401

SUBARTICLE A.

ADDITIONAL DEFINITIONS.

SEC.
81-27-6.001. Additional definitions.

§ 81-27-6.001. Additional definitions.

(a) In Articles 6, 7 and 8 of this chapter:

(1) "Capital" means:

(A) The sum of:

(i) The par value of all shares or participation shares of the state trust company having a par value that have been issued;

(ii) The consideration fixed by the board in the manner provided by the Mississippi Business Corporation Act for all shares or participation shares of the state trust company without par value that have been issued, except a part of that consideration that:

a. Has been actually received;

b. Is less than all of that consideration; and

c. The board, by resolution adopted not later than the sixtieth day after the date of issuance of those shares, has allocated to surplus with the prior approval of the commissioner; and

(iii) An amount not included in items (i) and (ii) that has been transferred to capital of the state trust company, on the payment of a share dividend or on adoption by the board of a resolution directing that all or part of surplus be transferred to capital, minus each reduction made as permitted by law; less

(B) All amounts otherwise included in subparagraphs (A)(i) and (ii) of this paragraph (1) that are attributable to the issuance of securities by the state trust company and that the commissioner determines, after notice and an opportunity for hearing, should be classified as debt rather than equity securities.

(2) "Conservator" means the commissioner or an agent of the commissioner exercising the powers and duties provided by subarticle B of Article 7 of this chapter.

(3) "Control" means:

(A) The ownership of or ability or power to vote, directly, acting through one or more other persons, or otherwise indirectly, more than twenty-five percent (25%) of the outstanding shares of a class of voting securities of a state trust company or other company;

(B) The ability to control the election of a majority of the board of a state trust company or other company;

(C) The power to exercise, directly or indirectly, a controlling influence over the management or policies of the state trust company or other company as determined by the commissioner after notice and an opportunity for hearing; or

(D) The conditioning of the transfer of more than twenty-five percent (25%) of the outstanding shares or participation shares of a class of voting securities of a state trust company or other company on the transfer of more than twenty-five percent (25%) of the outstanding shares of a class of voting securities of another state trust company or other company.

(4) "Equity capital" means the amount by which the total assets of a state trust company exceed the total liabilities of the state trust company.

(5) "Equity security" means:

(A) Stock, other than adjustable rate preferred stock and money market (auction rate) preferred stock;

(B) A certificate of interest or participation in a profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share or participation share, investment contract, voting-trust certificate, or partnership interest;

(C) A security immediately convertible at the option of the holder without payment of significant additional consideration into a security described by this paragraph (5);

(D) A security carrying a warrant or right to subscribe to or purchase a security described by this paragraph (5); and

(E) A certificate of interest or participation in, temporary or interim certificate for, or receipt for a security described by this paragraph (5) that evidences an existing or contingent equity ownership interest.

(6) "Hazardous condition" with respect to a trust company means:

(A) A refusal by the trust company to permit examination of its books, papers, accounts, records, or affairs by the commissioner;

(B) Violation by a trust company of a condition of its chartering or an agreement entered into between the trust company and the commissioner or the department; or

(C) A circumstance or condition in which an unreasonable risk of loss is threatened to clients or creditors of a trust company, excluding risk of loss to a client that arises as a result of the client's decisions or actions, but including a circumstance or condition in which a trust company:

(i) Is unable or lacks the means to meet its current obligations as they come due in the regular and ordinary course of business, even though the book or fair market value of its assets may exceed its liabilities;

(ii) Has equity capital less than the amount of restricted capital the trust company is required to maintain under Section 81-27-4.106, or the adequacy of its equity capital is threatened, as determined under regulatory accounting principles;

(iii) Has concentrated an excessive or unreasonable portion of its assets in a particular type or character of investment;

(iv) Violates or refuses to comply with this chapter, another statute or rule or regulation applicable to trust companies, or any final and enforceable order of the commissioner;

(v) Is in a condition that renders the continuation of a particular business practice hazardous to its clients and creditors; or

(vi) Conducts business in an unsafe or unsound manner, which includes, but is not limited to conducting business with,

a. Inexperienced or inattentive management;

b. Potentially dangerous operating practices;

c. Infrequent or inadequate audits;

d. Administration of assets that is notably deficient in relation to the volume and character or responsibility for asset holdings;

e. Failure to adhere to sound administrative practices;

f. Frequent occurrences of violations of laws, rules, regulations or terms of the governing instruments; or

g. Engaging in self-dealing or evidencing a notable degree of potential or actual conflicts of interest.

(7) "Insider" means:

(A) Each director, manager, managing participant, officer, and principal shareholder or participant of the trust company;

(B) Any company controlled by a person described by subparagraph (A) of this paragraph (7); or

(C) Any person who participates or has authority to participate, other than in the capacity of a director, in major policy-making functions of the state trust company, whether or not the person has an official title or the officer is serving without salary or compensation.

(8) "Insolvent" means a circumstance or condition in which a state trust company:

(A) Is unable or lacks the means to meet its current obligations as they come due in the regular and ordinary course of business, even if the value of its assets exceeds its liabilities;

(B) Has equity capital less than Five Hundred Thousand Dollars ($500,000.00), as determined under regulatory accounting principles;

(C) Fails to maintain deposit insurance with the Federal Deposit Insurance Corporation or its successor if the commissioner determines that deposit insurance is necessary for the safe and sound operation of the state trust company, or maintains adequate security for its deposits in accordance with Section 81-27-5.301.

(D) Sells or attempts to sell substantially all of its assets or merges or attempts to merge substantially all of its assets or business with another entity other than as provided by Article 3 of this chapter; or

(E) Attempts to dissolve or liquidate other than as provided by Subarticle A of Article 8 of this chapter.

(9) "Investment security" means a marketable obligation evidencing indebtedness of a person in the form of a bond, note, debenture, or other debt instrument not otherwise classified as a loan or extension of credit.

(10) "Limited liability trust company" means an entity organized under the Mississippi Limited Liability Company Act (Section 79-29-101 et seq.) that is chartered as a trust company under this chapter.

(11) "Loans and extensions of credit" means direct or indirect advances of funds by a state trust company to a person that are conditioned on the obligation of the person to repay the funds or that are repayable from specific property pledged by or on behalf of the person.

(12) "Manager" means a person elected to the board of a limited liability trust company.

(13) "Officer" means the presiding officer of the board, the principal executive officer, or another officer appointed by the board of a state trust company or other company, or a person or group of persons acting in a comparable capacity for the state trust company or other company.

(14) "Operating subsidiary" means a company for which a state trust company has the ownership, ability, or power to vote, directly, acting through one or more other persons, or otherwise indirectly, more than fifty percent (50%) of the outstanding shares of each class of voting securities or its equivalent of the company.

(15) "Participant" means an owner of a participation share in a limited liability trust company.

(16) "Participation shares" means the units into which the proprietary interests of a limited liability trust company are divided or subdivided by means of classes, series, relative rights, or preferences.

(17) "Principal shareholder" means a person who owns or has the ability or power to vote, directly, acting through one or more other persons,

or otherwise indirectly, ten percent (10%) or more of the outstanding shares or participation shares of any class of voting securities of a state trust company or other company.

(18) "Private trust company" means a trust company that does not engage in a trust business with the general public.

(19) "Shareholder" means an owner of a share in a state trust company.

(20) "Shares" means the units into which the proprietary interests of a state trust company are divided or subdivided by means of classes, series, relative rights, or preferences.

(21) "Subsidiary" means a company that is controlled by another person. The term includes a subsidiary of a subsidiary.

(22) "Surplus" means the amount by which the assets of a state trust company exceeds its liabilities, capital, and undivided profits.

(23) "Trust deposits" means the client funds held by a state trust company and authorized to be deposited with itself pending investment, distribution, or payment of debts on behalf of the client.

(24) "Undivided profits" means the part of equity capital of a state trust company equal to the balance of its net profits, income, gains, and losses since the date of its formation, minus subsequent distributions to shareholders or participants and transfers to surplus or capital under share dividends or appropriate board resolutions. The term includes amounts allocated to undivided profits as a result of a merger.

(25) "Voting security" means a share, participation share, or other evidence of proprietary interest in a state trust company or other company that has as an attribute the right to vote or participate in the election of the board of the state trust company or other company, regardless of whether the right is limited to the election of fewer than all of the board members. The term includes a security that is convertible or exchangeable into a voting security and a nonvoting participation share of a managing participant.

(b) The definitions shall be liberally construed to accomplish the purposes of Articles 6, 7 and 8 of this chapter. Additional definitions applicable to Articles 6, 7 and 8 of this chapter are contained in Section 81-27-1.002. The commissioner by rule or regulation may adopt other definitions to accomplish the purposes of Articles 6, 7 and 8 of this chapter.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

SUBARTICLE B.

TRANSFER OF OWNERSHIP INTEREST IN STATE TRUST COMPANY.

SEC.
81-27-6.101. Acquisition of control.
81-27-6.102. Application regarding acquisition of control.
81-27-6.103. Hearing and decision on acquisition of control.
81-27-6.104. Appeal from adverse decision.
81-27-6.105. Objection to other transfer.
81-27-6.106. Civil enforcement; criminal penalties.

§ 81-27-6.101. Acquisition of control.

(a) Except as expressly otherwise permitted, a person may not without the prior written approval of the commissioner directly or indirectly acquire control of a state trust company through a change in a legal or beneficial interest in voting securities of a state trust company or a corporation or other entity owning voting securities of a state trust company.

(b) This subarticle does not prohibit a person from negotiating to acquire, but not acquiring, control of a state trust company or a person that controls a state trust company.

(c) This section does not apply to:

(1) The acquisition of securities in connection with the exercise of a security interest or otherwise in full or partial satisfaction of a debt previously contracted for in good faith if the acquiring person files written notice of acquisition with the commissioner before the person votes the securities acquired;

(2) The acquisition of voting securities in any class or series by a controlling person who has previously complied with and received approval under this subarticle or who was identified as a controlling person in a prior application filed with and approved by the commissioner;

(3) An acquisition or transfer by operation of law, will, or intestate succession if the acquiring person files written notice of acquisition with the commissioner before the person votes the securities acquired;

(4) A transaction exempted by the commissioner by rule, regulation or order because the transaction is not within the purposes of this subarticle or the regulation of which is not necessary or appropriate to achieve the objectives of this subarticle.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

§ 81-27-6.102. Application regarding acquisition of control.

(a) The proposed transferee seeking approval to acquire control of a state trust company or a person that controls a state trust company must file with the commissioner:

(1) An application in the form prescribed by the commissioner;

(2) The filing fee required by statute, rule or regulation;

(3) All information required by rule or that the commissioner requires in a particular application as necessary to an informed decision to approve or reject the proposed acquisition.

(b) If the proposed transferee includes any group of individuals or entities acting in concert, the information required by the commissioner may be required of each member of the group.

(c) Information obtained by the commissioner under this section is confidential and may not be disclosed by the commissioner or any employee of the department except as provided by Subarticle B of Article 2 of this chapter.

(d) If the proposed transferee is not a Mississippi resident, a Mississippi corporation, or an out-of-state corporation qualified to do business in this state, a written consent to service of process on a resident of this state in any action or suit arising out of or connected with the proposed acquisition.

(e) The proposed transferee must publish notice of the application, its date of filing, and the identity of each participant, in the form specified by the commissioner, in a newspaper of general circulation in the county where the state trust company's home office is located, promptly after the commissioner accepts the application as complete. Publication of notice of an application filed in contemplation of a public tender offer subject to the requirements of 15 USCS Section 78n(d)(1) may be deferred for not more than thirty-four (34) days after the date the application is filed if:

(1) The proposed transferee requests confidential treatment and represents that a public announcement of the tender offer and the filing of appropriate forms with the Securities and Exchange Commission or the appropriate federal banking agency, as applicable, will occur within the period of deferral; and

(2) The commissioner determines that the public interest will not be harmed by the requested confidential treatment.

(f) The commissioner may waive the requirement that a notice be published or permit delayed publication on a determination that waiver or delay is in the public interest.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

§ 81-27-6.103. Hearing and decision on acquisition of control.

(a) Not later than the sixtieth day after the date the notice is published, the commissioner shall approve the application or set the application for hearing. If the commissioner sets a hearing, the commissioner shall conduct a hearing and one or more prehearing conferences and opportunities for discovery as the commissioner considers advisable and consistent with governing statutes and rules. A hearing held under this section is confidential and closed to the public.

(b) Based on the record, the commissioner may issue an order denying an application if:

(1) The acquisition would substantially lessen competition, be in restraint of trade, result in a monopoly, or be in furtherance of a combination or conspiracy to monopolize or attempt to monopolize the trust industry in any part of this state, unless:

(A) The anticompetitive effects of the proposed acquisition are clearly outweighed in the public interest by the probable effect of acquisition in meeting the convenience and needs of the community to be served; and

(B) The proposed acquisition is not in violation of law of this state or the United States;

(2) The financial condition of the proposed transferee, or any member of a group composing the proposed transferee, might jeopardize the financial stability of the state trust company being acquired;

(3) Plans or proposals to operate, liquidate, or sell the state trust company or its assets are not in the best interests of the state trust company;

(4) The experience, ability, standing, competence, trustworthiness, and integrity of the proposed transferee, or any member of a group comprising the proposed transferee, are insufficient to justify a belief that the state trust company will be free from improper or unlawful influence or interference with respect to the state trust company's operation in compliance with law;

(5) The state trust company will not be solvent, have adequate capitalization, or be in compliance with the laws of this state after the acquisition;

(6) The proposed transferee has failed to furnish all information pertinent to the application reasonably required by the commissioner; or

(7) The proposed transferee is not acting in good faith.

(c) If an application filed under this section is approved by the commissioner, the transaction may be consummated. Any written commitment from the proposed transferee offered to and accepted by the commissioner as a condition that the application will be approved is enforceable against the state trust company and the transferee and is considered for all purposes an agreement under this chapter.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

§ 81-27-6.104. Appeal from adverse decision.

(a) If a hearing has been held, the commissioner has entered an order denying the application, and the order has become final, the proposed transferee may appeal the final order to the Chancery Court of the First Judicial District of Hinds County, Mississippi.

(b) The filing of an appeal under this section does not stay the order of the commissioner.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

§ 81-27-6.105. Objection to other transfer.

This subarticle may not be construed to prevent the commissioner from investigating, commenting on, or seeking to enjoin or set aside a transfer of voting securities that evidence a direct or indirect interest in a state trust company, regardless of whether the transfer is included within this subarticle, if the commissioner considers the transfer to be against the public interest.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

§ 81-27-6.106. Civil enforcement; criminal penalties.

(a) The commissioner may bring any appropriate civil action against any person who the commissioner believes has committed or is about to commit a violation of this subarticle or a rule, regulation or order of the commissioner pertaining to this subarticle.

(b) A person who knowingly fails or refuses to file the application required by Section 81-27-6.102 is guilty of a misdemeanor and, upon conviction hereof, shall be fined not more than One Thousand Dollars ($1,000.00).

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

SUBARTICLE C.

BOARD AND OFFICERS.

SEC.

81-27-6.201. Voting securities held by state trust company.
81-27-6.202. Bylaws.
81-27-6.203. Board of directors, managers or managing participants.
81-27-6.204. Required board meetings.
81-27-6.205. Officers.
81-27-6.206. Certain criminal offenses.
81-27-6.207. Transactions with management and affiliates.
81-27-6.208. Fiduciary responsibility.
81-27-6.209. Record keeping.
81-27-6.210. Bonding requirements.
81-27-6.211. Reports of apparent crime.

§ 81-27-6.201. Voting securities held by state trust company.

(a) Voting securities of a state trust company held by the state trust company in a fiduciary capacity under a will or trust, whether registered in its own name or in the name of its nominee, may not be voted in the election of directors or managers or on a matter affecting the compensation of directors, managers, officers, or employees of the state trust company in that capacity, unless:

(1) Under the terms of the will or trust, the manner in which the voting securities are to be voted may be determined by a donor or beneficiary of the will or trust and the donor or beneficiary actually makes the determination in the matter at issue;

(2) The terms of the will or trust expressly direct the manner in which the securities must be voted to the extent that no discretion is vested in the state trust company as fiduciary; or

(3) The securities are voted solely by a cofiduciary that is not an affiliate of the state trust company, as if the cofiduciary were the sole fiduciary.

(b) Voting securities of a state trust company that cannot be voted under this section are considered to be authorized but unissued for purposes of determining the procedures for and results of the affected vote.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

§ 81-27-6.202. Bylaws.

(a) Each state trust company shall adopt bylaws and may amend its bylaws from time to time for the purposes and in accordance with the procedures set forth in the Mississippi Business Corporation Act.

(b) A limited liability trust company in which management is retained by the participants is not required to adopt bylaws if provisions required by law to be contained in the bylaws are contained in the articles of association or the participation agreement. If a limited liability trust company has adopted bylaws which designate each full liability participant, the limited liability trust company shall file with the commissioner a copy of the bylaws. Solely that portion of the bylaws designating each full liability participant shall be a public record.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

§ 81-27-6.203. Board of directors, managers or managing participants.

(a) The board of a state trust company must consist of not fewer than five (5) or more than twenty-five (25) directors, managers, or managing participants, the majority of whom must be residents of this state. Except for a limited liability trust company in which management has been retained by its participants, the principal executive officer of the state trust company is a member of the board. The principal executive officer acting in the capacity of board member is the board's presiding officer unless the board elects a different presiding officer to perform the duties as designated by the board.

(b) Unless the commissioner consents otherwise in writing, a person may not serve as director, manager, or managing participant of a state trust company if:

(1) The state trust company incurs an unreimbursed loss attributable to a charged-off obligation of or holds a judgment against the person or an entity that was controlled by the person at the time of funding and at the time of default on the loan that gave rise to the judgment or charged-off obligation;

(2) The person has been convicted of a felony; or

(3) The person has violated any provision of state law relating to loan of trust funds and purchase or sale of trust property by the trustee, and the violation has not been corrected.

(c) If a state trust company other than a limited liability trust company operated by managing participants does not elect directors or managers before the sixty-first day after the date of its regular annual meeting, the commissioner may appoint a conservator under Article 6 of this chapter to operate the state trust company and elect directors or managers, as appropriate. If the conservator is unable to locate or elect persons willing and able to serve as directors or managers, the commissioner may close the state trust company for liquidation.

(d) A vacancy on the board that reduces the number of directors, managers, or managing participants to fewer than five (5) must be filed not later than the thirtieth day after the date the vacancy occurs. A limited liability trust company with fewer than five (5) managing participants must add one or more new participants or elect a board of managers of not fewer than five (5) persons to resolve the vacancy. After thirty (30) days after the date the vacancy occurs, the commissioner may appoint a conservator under Article 6 of this chapter to operate the state trust company and elect a board of not fewer than five (5) persons to resolve the vacancy. If the conservator is unable to locate or elect five (5) persons willing and able to serve as directors or managers, the commissioner may close the state trust company for liquidation.

(e) Before each term to which a person is elected to serve as a director or manager of a state trust company, or annually for a person who is a managing participant, the person shall submit an affidavit for filing in the minutes of the state trust company stating that the person, to the extent applicable:

(1) Accepts the position and is not disqualified from serving in the position;

(2) Will not violate or knowingly permit an officer, director, manager, managing participant, or employee of the state trust company to violate any law applicable to the conduct of business of the state trust company; and

(3) Will diligently perform the duties of the position.

(f) An advisory director or manager is not considered a director if the advisory director or manager:

(1) Is not elected by the shareholders or participants of the state trust company;

(2) Does not vote on matters before the board or a committee of the board and is not counted for purposes of determining a quorum of the board or committee; and

(3) Provides solely general policy advice to the board.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

§ 81-27-6.204. Required board meetings.

The board of a state trust company shall hold at least one (1) regular meeting each quarter. At each regular meeting the board shall review and approve the minutes of the prior meeting and review the operations, activities, and financial condition of the state trust company. The board may designate committees from among its members to perform these duties and approve or disapprove the committees' reports at each regular meeting. All actions of the board must be recorded in its minutes.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

§ 81-27-6.205. Officers.

(a) The board shall annually appoint the officers of the state trust company, who serve at the pleasure of the board. The state trust company must have a principal executive officer primarily responsible for the execution of board policies and operation of the state trust company and an officer responsible for the maintenance and storage of all corporate books and records of the state trust company and for required attestation of signatures. These positions may not be held by the same person. The board may appoint other officers of the state trust company as the board considers necessary.

(b) Unless expressly authorized by a resolution of the board recorded in its minutes, an officer or employee may not create or dispose of a state trust company asset or create or incur a liability on behalf of the state trust company.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

§ 81-27-6.206. Certain criminal offenses.

(a) An officer, director, manager, managing participant, employee, shareholder, or participant of a state trust company commits an offense if the person knowingly:

(1) Conceals information or a fact, or removes, destroys, or conceals a book or record of the state trust company for the purpose of concealing information or a fact from the commissioner or an agent of the commissioner; or

(2) For the purpose of concealing, removes or destroys any book or record of the state trust company that is material to a pending or anticipated legal or administrative proceeding.

(b) An officer, director, manager, managing participant, or employee of a state trust company commits an offense if the person knowingly makes a false entry in the books or records or in any report or statement of the state trust company.

(c) Any person committing an offense under this section is guilty of a felony and, upon conviction thereof, shall be fined not more than Ten Thousand Dollars ($10,000.00), or imprisoned in the State Penitentiary for not more than one (1) year, or both.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

§ 81-27-6.207. Transactions with management and affiliates.

(a) Without the prior approval of a disinterested majority of the board recorded in the minutes, or if a disinterested majority cannot be obtained the prior written approval of the commissioner, a state trust company may not directly or indirectly:

(1) Sell or lease an asset of the state trust company to an officer, director, manager, managing participant, or principal shareholder or par-

ticipant of the state trust company or an affiliate of the state trust company; or

(2) Purchase or lease an asset in which an officer, director, manager, managing participant, or principal shareholder or participant of the state trust company or an affiliate of the state trust company has an interest; or

(3) Subject to Section 81-27-5.201, extend credit to an officer, director, manager, managing participant, or principal shareholder or participant of the state trust company or an affiliate of the state trust company.

(b) Notwithstanding subsection (a) of this section, a lease transaction described in subsection (a)(2) of this section involving real property may not be consummated, renewed, or extended without the prior written approval of the commissioner. For purposes of this subsection only, an affiliate of the state trust company does not include a subsidiary of the state trust company.

(c) Subject to Section 81-27-5.201, a state trust company may not directly or indirectly extend credit to an employee, officer, director, manager, managing participant, or principal shareholder or participant of the state trust company or an affiliate of the state trust company, unless the extension of credit:

(1) Is made on substantially the same terms, including interest rates and collateral, as those prevailing at the time for comparable transactions by the state trust company with persons who are not employees, officers, directors, managers, managing participants, or principal shareholders, participants or affiliates of the state trust company; and

(2) Does not involve more than the normal risk of repayment or present other unfavorable features; and

(3) The state trust company follows credit underwriting procedures that are not less stringent than those applicable to comparable transactions by the state trust company with persons who are not employees, officers, directors, managers, managing participants, or principal shareholders, participants or affiliates of the state trust company.

(d) An officer, director, manager, or managing participant of the state trust company who knowingly participates in or permits a violation of this section is guilty of a felony and, upon conviction thereof, shall be fined not more than Ten Thousand Dollars ($10,000.00), or imprisoned in the State Penitentiary for not more than one (1) year, or both.

(e) The commissioner may adopt rules or regulations to administer and carry out this section, including rules or regulations to establish limits, requirements, or exemptions other than those specified by this section for particular categories of transactions.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

§ 81-27-6.208. Fiduciary responsibility.

The board of a state trust company is responsible for the proper exercise of fiduciary powers by the state trust company and each matter pertinent to the exercise of fiduciary powers, including:

(1) The determination of policies;

(2) The investment and disposition of property held in a fiduciary capacity; and

(3) The direction and review of the actions of each officer, employee, and committee used by the state trust company in the exercise of its fiduciary powers.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

§ 81-27-6.209. Record keeping.

A state trust company shall keep its fiduciary records separate and distinct from other records of the state trust company. The fiduciary records must contain all material information relative to each account as appropriate under the circumstances.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

§ 81-27-6.210. Bonding requirements.

(a) The board of a state trust company shall require protection and indemnity for clients in reasonable amounts established by rules or regulations adopted under this article, against dishonesty, fraud, defalcation, forgery, theft, and other similar insurable losses, with corporate insurance or surety companies:

(1) Authorized to do business in this state; or

(2) Acceptable to the commissioner and otherwise lawfully permitted to issue the coverage against those losses in this state.

(b) Except as otherwise provided by rule or regulation, coverage required under subsection (a) of this section must include each director, manager, managing participant, officer, and employee of the state trust company without regard to whether the person receives salary or other compensation.

(c) A state trust company may apply to the commissioner for permission to eliminate the bonding requirement of this section for a particular individual. The commissioner shall approve the application if the commissioner finds that the bonding requirement is unnecessary or burdensome. Unless the application presents novel or unusual questions, the commissioner shall approve the application or set the application for hearing not later than the sixty-first day after the date the commissioner considers the application complete and accepted for filing.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

§ 81-27-6.211. Reports of apparent crime.

A trust company that is the victim of a robbery, has a shortage of corporate or fiduciary funds in excess of Five Thousand Dollars ($5,000.00), or is the victim of an apparent or suspected misapplication of its corporate or fiduciary funds or property in any amount by a director, manager, managing participant, officer, or employee shall report such robbery, shortages or apparent or suspected misapplication to the commissioner within forty-eight (48) hours after the time it is discovered. The initial report may be oral if the report is promptly confirmed in writing. The trust company or a director, manager, managing participant, officer, employee, or agent is not subject to liability for defamation or another charge resulting from information supplied in the report.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

SUBARTICLE D.

SPECIAL PROVISIONS FOR LIMITED LIABILITY TRUST COMPANIES.

SEC.
81-27-6.301. Filing of notice of full liability.
81-27-6.302. Liability of participants and managers.
81-27-6.303. Contracting debts and obligations.
81-27-6.304. Management of limited liability trust company.
81-27-6.305. Withdrawal or reduction of participant's contribution to capital.
81-27-6.306. Interest in limited liability trust company; transferability of interest.
81-27-6.307. Dissolution.
81-27-6.308. Allocation of profits and losses.
81-27-6.309. Distributions.
81-27-6.310. Other provisions related to a limited liability trust company.

§ 81-27-6.301. Filing of notice of full liability.

(a) A limited liability trust company shall file with the commissioner a copy of any participation agreement by which a participant of the limited liability trust company agrees to become a full liability participant and the name and address of each full liability participant. Solely that portion of the filed copy containing the designation of each full liability participant shall be a public record.

(b) The commissioner may require a complete copy of the participation agreement to be filed with the department, regardless of whether the state trust company has a full liability participant, except that the provisions of the participation agreement other than those by which a participant of the limited liability trust company agrees to become a full liability participant are confidential and subject to release only as provided by Subarticle B of Article 2 of this chapter.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

§ 81-27-6.302. Liability of participants and managers.

(a) Except as provided by subsection (b) of this section, the participants, participant-transferees, and managers of a limited liability trust company may not be held liable for a debt, obligation, or liability of the limited liability trust company, including a debt, obligation, or liability under a judgment, decree, or order of court. A participant, other than a full liability participant, or a manager of a limited liability trust company is not a proper party to proceedings by or against a limited liability trust company, unless the object of the proceeding is to enforce a participant's or manager's right against or liability to a limited liability trust company.

(b) A full liability participant of a limited liability trust company is liable under a judgment, decree, or order of court for a debt, obligation, or liability of the limited liability trust company that accrued during the participation of the full liability participant in the limited liability trust company and before the full liability participant or a successor in interest files a notice of withdrawal as a full liability participant from the limited liability trust company with the commissioner. The filed notice of withdrawal is a public record.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

§ 81-27-6.303. Contracting debts and obligations.

Except as provided by this section or the articles of association of the limited liability trust company, debts, liabilities, and other obligations may be contracted for or incurred on behalf of a limited liability trust company by:

(1) A majority of the managers, if management of the limited liability trust company has been vested in a board of managers;

(2) A majority of the managing participants; or

(3) An officer or other agent vested with actual or apparent authority to contract for or incur the debt, liability, or other obligation.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

§ 81-27-6.304. Management of limited liability trust company.

(a) Management of a limited liability trust company is vested in the participants in proportion to each participant's contribution to capital, as adjusted periodically to properly reflect any additional contribution. The articles of association may provide that management of a limited liability trust company is vested in a board of managers to be elected annually by the participants as prescribed by the bylaws.

(b) Participants of a limited liability trust company may not retain management and must elect a board of managers if:

(1) Any participant is disqualified from serving as a managing participant under Section 81-27-6.203;

(2) The limited liability trust company has fewer than five (5) or more than twenty-five (25) participants; or

(3) Any participant has been removed by the commissioner under Subarticle A of Article 6 of this chapter.

(c) The articles of association, bylaws, and participation agreement of a limited liability trust company may use the terms "director" and "board" instead of "manager" and "board of managers," respectively.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

§ 81-27-6.305. Withdrawal or reduction of participant's contribution to capital.

(a) A participant may not receive from a limited liability trust company any part of the participant's contribution to capital until:

(1) All liabilities of the state trust company, except liabilities to participants on account of contribution to capital, have been paid or, if after the withdrawal or reduction, sufficient property of the state trust company will remain to pay all liabilities of the state trust company, except liabilities to participants on account of contribution to capital;

(2) All participants consent, unless the return of the contribution to capital may be demanded as provided by this article; or

(3) The articles of association are canceled or amended to set out the withdrawal or reduction.

(b) A participant may demand the return of the participant's contribution to capital on the dissolution of the limited liability trust company and the failure by the full liability participants to exercise the right for the business of the limited liability trust company to be carried on by the remaining participants as provided by Section 81-27-6.307.

(c) Unless allowed by the articles of association or by the unanimous consent of all participants of the limited liability trust company, a participant may demand the return of the participant's contribution to capital only in cash.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

§ 81-27-6.306. Interest in limited liability trust company; transferability of interest.

(a) The interest of a participant or participant-transferee in a limited liability trust company is the personal estate of the participant or the participant-transferee and may be transferred as provided by the bylaws or the participation agreement. A transferee of a participant's interest has the status of a participant-transferee and does not by the transfer become a participant or obtain a right to participate in the management of the limited liability trust company. A participant-transferee is entitled to receive only a share of profits, return of contribution, or other distributive benefit in respect to the interest transferred to which the participant who transferred the interest would have been entitled. A participant-transferee may become a participant only as provided by the bylaws or the participation agreement.

(b) A limited liability trust company may add additional participants in the same manner as participant-transferees after payment in full of the capital contribution to the limited liability trust company payable for the issuance of additional participation interests.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

§ 81-27-6.307. Dissolution.

(a) A limited liability trust company organized under this article is dissolved on:

(1) The expiration of the period fixed for the duration of the limited liability trust company;

(2) A vote to dissolve or the execution of a written consent to dissolve by all full liability participants, if any, and a sufficient number of other participants that combined with all full liability participants hold at least two-thirds (⅔) of the participation shares in each class in the association, or a greater fraction as provided by the articles of association;

(3) Except as provided by the articles of association, the death, adjudication of incompentence, expulsion, bankruptcy, retirement, or resignation of a participant unless a majority in interest of all remaining participants elect in writing not later than the ninetieth day after the date of the event to continue the business of the association; or

(4) The occurrence of an event of dissolution specified in the articles of association.

(b) A dissolution under this section is considered to be the initiation of a voluntary liquidation under Subarticle B of Article 7 of this chapter.

(c) An event of dissolution described by subsection (a)(3) of this section does not cancel or revoke a contract to which the state trust company is a party, including a trust indenture or agreement or voluntary dissolution under Subarticle B of Article 7 of this chapter, until the period for the remaining participants to continue the business of the state trust company has expired without the remaining participants having completed the necessary action to continue the business of the state trust company.

SOURCES: Laws, 1998, ch. 437, § 1; Laws, 2008, ch. 442, § 22, eff from and after July 1, 2008.

§ 81-27-6.308. Allocation of profits and losses.

The profits and losses of a limited liability trust company may be allocated among the participants and among classes of participants as provided by the participation agreement. Without the prior written approval of the commissioner, the profits and losses must be allocated based on the relative interests of the participants as reflected in the articles of association and related documents filed with and approved by the commissioner.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

§ 81-27-6.309. Distributions.

Subject to Section 81-27-4.106, distributions of cash or other assets of a limited liability trust company may be made to the participants as provided by the participation agreement. Without the prior written approval of the commissioner, distributions must be made to the participants based on the relative interests of the participants as reflected in the articles of association and related documents filed with and approved by the commissioner.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

§ 81-27-6.310. Other provisions related to a limited liability trust company.

For purposes of the provisions of this chapter other than this subarticle, as the context requires:

(1) A manager and the board of managers are considered to be a director and the board of directors, respectively;

(2) If there is not a board of managers, a participant is considered to be a director and all of the participants are considered to be the board of directors;

(3) A participant or participant-transferee is considered to be a shareholder;

(4) A participation share is considered to be a share of stock; and

(5) A distribution is considered to be a dividend.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

SUBARTICLE E.

MERGER, CONSOLIDATION, TRANSFER OF ASSETS.

SEC.
81-27-6.401. Merger authority.
81-27-6.402. Merger application.
81-27-6.403. Approval of commissioner.
81-27-6.404. Rights of dissenters to mergers.
81-27-6.405. Authority to act as disbursing agent.
81-27-6.406. Liquidation of selling state trust company.
81-27-6.407. Payment to creditors.
81-27-6.408. Sale of assets.

§ 81-27-6.401. Merger authority.

(a) With the prior written approval of the commissioner, a state trust company may merge or consolidate with another person to the same extent as a business corporation under the Mississippi Business Corporation Act, subject to this subarticle.

(b) Implementation of the plan of merger by the parties and approval of the board, shareholders, participants, or owners of the parties must be made or obtained as provided by the Mississippi Business Corporation Act as if the state trust company were a domestic corporation and all other parties to the merger were foreign corporations and other entities, except as otherwise provided by rules or regulations adopted under this article.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

§ 81-27-6.402. Merger application.

(a) The original articles of merger, a number of copies of the articles of merger equal to the number of surviving, new, and acquiring entities, and an application in the form required by the commissioner must be filed with the commissioner. The commissioner shall investigate the condition of the merging parties. The commissioner may require the submission of additional information as considered necessary to an informed decision.

(b) The commissioner may approve the merger if:

(1) Each resulting state trust company will be solvent and have adequate capitalization for its business and location;

(2) Each resulting state trust company has in all respects complied with the statutes and rules relative to the organization of a state trust company;

(3) All fiduciary obligations and liabilities of each state trust company that is a party to the merger have been properly discharged or otherwise lawfully assumed or retained by a state trust company or other fiduciary;

(4) Each surviving, new, or acquiring person that is not authorized to engage in the trust business will not engage in the trust business and has in all respects complied with the laws of this state; and

(5) All conditions imposed by the commissioner have been satisfied or otherwise resolved.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

§ 81-27-6.403. Approval of commissioner.

(a) If the commissioner approves the merger and finds that all required filing fees and investigative costs have been paid, the commissioner shall:

(1) Endorse the face of the original and each copy with the date of approval and the word "Approved";

(2) File the original in the department's records; and

(3) Deliver a certified copy of the articles of merger to each surviving, new, or acquiring entity.

(b) A merger is effective on the date of approval, unless the merger agreement provides and the commissioner consents to a different effective date.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

§ 81-27-6.404. Rights of dissenters to mergers.

A shareholder, participant, or participant-transferee may dissent from the merger to the extent and by following the procedure provided by the Mississippi Business Corporation Act or rules or regulations adopted under this chapter.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

§ 81-27-6.405. Authority to act as disbursing agent.

The purchasing trust institution may hold the purchase price and any additional funds delivered to it by the selling institution in trust for the selling institution and may act as agent of the selling institution in disbursing those funds in trust by paying the creditors of the selling institution. If the purchasing trust institution acts under written contract of agency approved by the commissioner that specifically names each creditor and the amount to be paid each, and if the agency as limited to the purely ministerial act of paying creditors the amounts due them as determined by the selling institution and reflected in the contract of agency and does not involve discretionary duties or authority other than the identification of the creditors named, the purchasing trust institution:

(1) May rely on the contract of agency and the instructions included in it; and

(2) Is not responsible for:

(A) Any error made by the selling institution in determining its liabilities, and creditors to whom the liabilities are due, or the amounts due the creditors; or

(B) Any preference that results from the payments made under the contract of agency and the instructions included in it.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

§ 81-27-6.406. Liquidation of selling state trust company.

If the selling trust institution is at any time after the sale of assets voluntarily or involuntarily closed for liquidation by a state or federal regulatory agency, the purchasing trust company shall pay to the receiver of the selling institution the balance of the funds held by it in trust for the selling institution and not yet paid to the creditors of the selling institution. Without further action the purchasing trust institution is discharged of all responsibilities to the selling institution, its receiver, or its creditors, shareholders, or participants.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

§ 81-27-6.407. Payment to creditors.

Payment to a creditor of the selling institution of the amount to be paid the person under the terms of the contract of agency may be made by the purchasing trust company by opening an agency account in the name of the creditor, crediting the account with the amount to be paid the creditor under the terms of the agency contract, and mailing or personally delivering a duplicate ticket evidencing the credit to the creditor at the person's address shown in the records of the selling institution. The relationship between the purchasing trust institution and the creditor is that of agent to creditor only to the extent of the credit reflected by the ticket.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

§ 81-27-6.408. Sale of assets.

(a) The board of a state trust company, with the commissioner's approval, may cause a state trust company to sell all or substantially all of its assets, including the right to control accounts established with the trust company, without shareholder or participant approval if the commissioner finds:

(1) The interests of the state trust company's clients, depositors, and creditors are jeopardized because of insolvency or imminent insolvency of the state trust company; and

(2) The sale is in the best interest of the state trust company's clients and creditors; and

(3) The Federal Deposit Insurance Corporation or its successor approves the transaction unless the deposits of the state trust company are not insured.

(b) A sale under this section must include an assumption and promise by the buyer to pay or otherwise discharge:

(1) All of the state trust company's liabilities to clients and depositors;

(2) All of the state trust company's liabilities for salaries of the state trust company's employees incurred before the date of the sale;

(3) Obligations incurred by the commissioner arising out of the supervision or sale of the state trust company; and

(4) Fees and assessments due the department.

(c) This section does not limit the incidental power of a state trust company to buy and sell assets in the ordinary course of business.

(d) This section does not affect the commissioner's right to take action under another law. The sale by a trust company of all or substantially all of its assets with shareholder or participant approval is considered a voluntary dissolution and liquidation and is governed by Section 81-5-101.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

ARTICLE 7.

ENFORCEMENT ACTIONS.

Subarticle A. Supervision and Examination....................................81-27-7.001
Subarticle B. Enforcement Orders; Trust Company Management..........81-27-7.101

SUBARTICLE A.

SUPERVISION AND EXAMINATION.

SEC.
81-27-7.001. Commissioner shall have supervision over authorized trust institutions and shall examine.

81-27-7.002. Fees for examination.
81-27-7.003. Department to act under authority of the commissioner.

§ 81-27-7.001. Commissioner shall have supervision over authorized trust institutions and shall examine.

(a) For the purposes of this article, the term "authorized trust institution" means any state trust company, trust office or representative trust office.

(b) Every authorized trust institution shall be under the supervision of the commissioner. The commissioner shall execute and enforce through the department and such other agents as are now or may hereafter be created or appointed, all laws which are now or may hereafter be enacted relating to authorized trust institutions. For the more complete and thorough enforcement of the provisions of this chapter, the commissioner may promulgate such rules or regulations not inconsistent with the provisions of the chapter, as may, in its opinion, be necessary to carry out the provisions of the laws relating to authorized trust institutions and as may be further necessary to insure safe and conservative management of an authorized trust institution under its supervision taking into consideration the appropriate interest of the creditors, stockholders, participants and the public in their relations with such authorized trust institutions. All authorized trust institutions doing business under the provisions of this chapter shall conduct their business in a manner consistent with all laws relating to authorized trust institutions, and all rules, regulations, and instructions that may be promulgated or issued by the commissioner.

(c) The commissioner, or his duly authorized representative, for the purpose of discovering violations of this chapter and for the purpose of determining whether companies or offices are subject to the provisions of this article, may examine authorized trust institutions that have a charter, license or registration under this chapter and companies or offices that are reasonably suspected by the commissioner of conducting business that requires a charter, license or registration under this chapter, including all relevant books, records and papers employed by those companies or offices in the transaction of their business, and may summon witnesses and examine them under oath concerning matters relating to the business of those companies or offices, or such other matters as may be relevant to the discovery of violations of this chapter, including without limitation the conduct of business without a charter, license or registration as required under this chapter.

SOURCES: Laws, 1998, ch. 437, § 1; Laws, 2007, ch. 341, § 1, eff from and after passage (approved Mar. 14, 2007.)

§ 81-27-7.002. Fees for examination.

The fees for examination of authorized trust institutions shall be assessed and collected by the commissioner.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

§ 81-27-7.003. Department to act under authority of the commissioner.

All the powers, duties and functions granted to or imposed upon the department under this chapter shall be exercised under the direction and supervision of the commissioner.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

SUBARTICLE B.

ENFORCEMENT ORDERS; TRUST COMPANY MANAGEMENT.

SEC.
81-27-7.101. Administrative orders; penalties for violation.
81-27-7.102. Notice and opportunity for hearing.
81-27-7.103. Subpoena power and examination under oath.
81-27-7.104. Removal of directors, officers and employees.
81-27-7.105. Review by the court.

§ 81-27-7.101. Administrative orders; penalties for violation.

(a) In addition to any other powers conferred by this chapter, the commissioner shall have the power to:

(1) Order any authorized trust institution, or subsidiary thereof, or any director, officer, or employee to cease and desist violating any provision of this chapter or any lawful rule or regulation issued under this chapter.

(2) Order any authorized trust institution, or subsidiary thereof, or any director, officer, or employee to cease and desist from a course of conduct that is unsafe or unsound and which is likely to cause insolvency or dissipation of assets or is likely to jeopardize or otherwise seriously prejudice the interests of the public in their relationship with the authorized trust institution.

(3) Order any company to cease engaging in an unauthorized trust activity.

(4) Enter any order pursuant to Section 81-27-2.302.

(b) The commissioner may impose a civil money penalty of not more than One Thousand Dollars ($1,000.00) for each violation by any authorized trust institution, or subsidiary thereof, or any director, officer, or employee of an order issued under paragraph (1) of subsection (a) of this section. In addition, the commissioner may impose a civil money penalty of not more than One Thousand Dollars ($1,000.00) per day for each day that an authorized trust institution, or subsidiary thereof, or any director, officer, or employee violates a cease and desist order issued under paragraph (2) or (3) of subsection (a) of this section. All civil money penalties collected under this section shall be deposited in the State General Fund.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

§ 81-27-7.102. Notice and opportunity for hearing.

Notice and opportunity for a hearing shall be provided before any of the foregoing actions may be undertaken by the commissioner. However, in cases involving extraordinary circumstances requiring immediate action, the commissioner may take such action, but shall promptly afford a subsequent hearing upon application to rescind the action taken.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

§ 81-27-7.103. Subpoena power and examination under oath.

The commissioner shall have the power to subpoena witnesses, compel their attendance, require the production of evidence, administer oaths, and examine any person under oath in connection with any subject related to a duty imposed or a power vested in the commissioner.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

§ 81-27-7.104. Removal of directors, officers and employees.

Consistent with Section 81-27-7.102, the commissioner may require the immediate removal from office of any officer, director, or employee of any authorized trust institution, who is found to be dishonest, incompetent, or reckless in the management of the affairs of the authorized trust institution, or who persistently violates the laws of this state or the lawful orders, instructions, and regulations issued by the commissioner.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

§ 81-27-7.105. Review by the court.

Administrative orders issued by the commissioner and civil money penalties imposed for violation of such orders shall be subject to review by the Chancery Court of the First Judicial District of Hinds County, Mississippi.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

ARTICLE 8.

DISSOLUTION AND RECEIVERSHIP; CONSERVATORSHIP.

Subarticle A. Voluntary dissolution and liquidation.........................81-27-8.001
Subarticle B. Involuntary Dissolution and Liquidation.....................81-27-8.101

SUBARTICLE A.

VOLUNTARY DISSOLUTION AND LIQUIDATION.

SEC.
81-27-8.001. Required vote of shareholders or participants.

81-27-8.002. Corporate procedure.
81-27-8.003. Authority to liquidate; publication.
81-27-8.004. Examination and reports.
81-27-8.005. Unclaimed property.
81-27-8.006. Sell or transfer of property.

§ 81-27-8.001. Required vote of shareholders or participants.

A state trust company may go into voluntary liquidation and be closed, and may surrender its charter and franchise as a corporation of this state by the affirmative votes of its shareholders or participants owning two-thirds (⅔) of its stock or participation shares.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

§ 81-27-8.002. Corporate procedure.

Shareholder or participant action to liquidate a state trust company shall be taken at a meeting of the shareholders or participants duly called by resolution of the board of directors or members, written notice of which, stating the purpose of the meeting, shall be mailed to each shareholder or participant, or in case of a shareholder's or participant's death, to such shareholder's or participant's legal representative or heirs at law, addressed to the shareholder's or participant's last known residence ten (10) days previous to the date of such meeting. If stockholders or participants shall, by the required vote, elect to liquidate a trust company, a certified copy of all proceedings of the meeting at which such action shall have been taken, verified by the oath of the president and secretary, shall be transmitted to the commissioner for approval.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

§ 81-27-8.003. Authority to liquidate; publication.

If the commissioner shall approve the liquidation, the commissioner shall issue to the state trust company under the commissioner's seal, a permit for such purpose. No such permit shall be issued by the commissioner until the commissioner shall be satisfied that provision has been made by the state trust company to satisfy and pay off all creditors. If not so satisfied, the commissioner shall refuse to issue a permit, and shall be authorized to take possession of the state trust company and its assets and business, and hold the same and liquidate the state trust company in the manner provided in this chapter. When the commissioner shall approve the voluntary liquidation of a state trust company, the directors of the state trust company shall cause to be published in a newspaper in the county in which the same is located, or if no newspaper is published in such county, then in a newspaper having a general circulation in such county, a notice that the state trust company is closing down its affairs and going into liquidation, and notify its creditors to present their claims for payment. Such notice shall be published once a week for four (4) consecutive weeks.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

§ 81-27-8.004. Examination and reports.

When any state trust company shall be in process of voluntary liquidation, it shall be subject to examination by the commissioner, and shall furnish such reports from time to time as may be called for by the commissioner.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

§ 81-27-8.005. Unclaimed property.

All unclaimed property remaining in the hands of a liquidated state trust company shall be subject to the provisions of Uniform Disposition of Unclaimed Property Act (Section 89-12-1 et seq.).

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

§ 81-27-8.006. Sell or transfer of property.

Whenever the commissioner shall approve it, any state trust company may sell and transfer to any other trust institution, whether state or federally chartered, all of its assets of every kind upon such terms as may be agreed upon and approved by the commissioner and by two-thirds (⅔) vote of its board of directors or members. A certified copy of the minutes of any meeting at which such action is taken, under the oath of the president and secretary, together with a copy of the contract of sale and transfer, shall be filed with the commissioner. Whenever voluntary liquidation shall be approved by the commissioner or the sale and transfer of the assets of any state trust company shall be approved by the commissioner, a certified copy of such approval under seal of the commissioner, filed in the office of the Secretary of State, shall authorize the cancellation of the charter of such state trust company, subject, however, to its continued existence, as provided by this chapter and the general law relative to corporations.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

SUBARTICLE B.

INVOLUNTARY DISSOLUTION AND LIQUIDATION.

SEC.
81-27-8.101. When commissioner may take charge.
81-27-8.102. Directors may act.
81-27-8.103. Notice of seizure; bar to attachment.
81-27-8.104. Notice to trust institutions, corporations and others holding assets; liens not to accrue.
81-27-8.105. Permission to resume business.
81-27-8.106. Remedy for seizure; answer to notice, injunction; and appeal.
81-27-8.107. Collection of debts and claims; commissioner succeeds to all property of the state trust company.

81-27-8.108. Bond of the commissioner; surety; condition; minimum penalty.
81-27-8.109. Inventory.
81-27-8.110. Notice and time for filing claims.
81-27-8.111. Power to reject claims; notice; affidavit of service; action on claims.
81-27-8.112. List of claims presented and deposits; copies; proviso.
81-27-8.113. Declaration of dividends; order of preference in distribution.
81-27-8.114. Deposit of funds collected.
81-27-8.115. Employment of counsel; accountants; and other experts; compensation.
81-27-8.116. Unclaimed dividends held in trust.
81-27-8.117. Action by the commissioner following full settlement.
81-27-8.118. Annual report of the commissioner; items included.
81-27-8.119. Compensation of the commissioner.
81-27-8.120. Exclusive method of liquidation.
81-27-8.121. Disposition of books and records.
81-27-8.122. Destruction of books and records.
81-27-8.123. Trust terminated on insolvency of state trust company.
81-27-8.124. Petition for new trustee.
81-27-8.125. Publication and notice.
81-27-8.126. Appointment where no objection made.
81-27-8.127. Hearing upon objection.
81-27-8.128. Registration of final order.
81-27-8.129. Petition and order applicable to all instruments.
81-27-8.130. Additional remedy.
81-27-8.131. Report to the Secretary of State.

§ 81-27-8.101. When commissioner may take charge.

The commissioner may forthwith take possession of the business and property of any state trust company to which this chapter is applicable whenever it shall appear that such state trust company:

(1) Has violated its charter or any laws applicable thereto;

(2) Is conducting its business in an unauthorized or unsafe manner;

(3) Is in an unsafe or unsound condition to transact its business;

(4) Has an impairment of its capital;

(5) Has become otherwise insolvent;

(6) Has neglected or refused to comply with the terms of a duly issued lawful order of the commissioner;

(7) Has refused, upon proper demand, to submit its records, affairs, and concerns for inspection and examination of a duly appointed or authorized examiner of the commissioner;

(8) Its officers have refused to be examined upon oath regarding its affairs; or

(9) Has made a voluntary assignment of its assets to trustees.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

§ 81-27-8.102. Directors may act.

Any state trust company may place its assets and business under the control of the commissioner for liquidation by a resolution of a majority of its directors or members upon notice to the commissioner, and, upon taking possession of the state trust company, the commissioner, or duly appointed agent, shall retain possession thereof until such state trust company shall be authorized by the commissioner to resume business or until the affairs of the state trust company shall be fully liquidated as provided in this article. No state trust company shall make any general assignment for the benefit of its creditors except by surrendering possession of its assets to the commissioner, as herein provided. Whenever any state trust company for any reason shall suspend operations for any length of time, the state trust company shall, immediately upon such suspension of operations, be deemed in the possession of the commissioner and subject to liquidation hereunder.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

§ 81-27-8.103. Notice of seizure; bar to attachment.

When the commissioner, or duly appointed agent, shall take possession of any state trust company under Section 81-27-8.101 or Section 81-27-8.102, the commissioner or agent shall within forty-eight (48) hours, file with the chancery clerk of the county where the state trust company is located, a notice of such action which shall state the reason therefor, and such notice shall be deemed the equivalent of a summons and complaint against the state trust company in an action in the chancery court except that it shall not be necessary to make service thereof. The taking possession of any state trust company shall be effective on the date when such authority was exercised and from and after such time all assets and property of such state trust company, of whatever nature, shall be deemed to be in possession of the commissioner, and the exercise of such authority shall operate as a bar to any attachment, or other legal proceeding against the state trust company or its assets. After the commissioner's exercise of authority, no lien shall be acquired, in any manner binding or affecting any of the assets of the state trust company and every transfer or assignment made thereafter by the state trust company, or by its authority, of the whole or any part of its assets, shall be null and void; and the commissioner, shall be substituted in place of the state trust company in all actions in the state or federal courts, pending at the time of the exercise of such authority.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

§ 81-27-8.104. Notice to trust institutions, corporations and others holding assets; liens not to accrue.

Upon taking possession of the assets and business of any state trust company, the commissioner, or duly appointed agent, shall forthwith give notice, by mail or otherwise, of such action to all trust institutions or other persons or corporations holding, or having in possession, any assets of such state trust company. No trust company or other person or corporation shall have a lien or charge for any payment, advance or clearance made, or liability incurred against any of the assets of the state trust company after possession has been taken as provided under this section, except as hereinafter provided.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

§ 81-27-8.105. Permission to resume business.

After the commissioner has taken possession of any state trust company, such state trust company may resume business as provided by law.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

§ 81-27-8.106. Remedy for seizure; answer to notice, injunction; and appeal.

Whenever any state trust company, of whose assets and business the commissioner has taken possession as herein provided, except where possession is taken under Section 81-27-8.102, shall deem itself aggrieved thereby, and it may, at any time within ten (10) days after the filing of the notice with the chancery clerk, file an answer to the notice and may also upon notice to the commissioner, apply to the presiding chancellor of the district for an injunction to enjoin further proceedings by the commissioner. The chancellor may cite the commissioner to show cause within ten (10) days thereafter why further proceedings should not be enjoined, and after hearing the allegations and proof of the parties with respect to the condition of the state trust company, may dismiss such application for injunction or may enjoin further proceedings under this section by the commissioner. If the chancellor shall enjoin further action of the commissioner and permit the reopening of the state trust company, the chancellor shall have authority to require of such state trust company a surety bond as the chancellor deems necessary to insure its solvency, payable to the commissioner for the sole benefit of the general creditors of the state trust company, and upon such terms as the chancellor may deem proper. Either party shall have the right to appeal to the Supreme Court as in other actions.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

§ 81-27-8.107. Collection of debts and claims; commissioner succeeds to all property of the state trust company.

(a) Upon taking possession of the assets and business of any state trust company by the commissioner, or a duly appointed agent, the commissioner or agent is authorized to collect all money due the state trust company, and to do such other acts as are necessary to conserve its assets and property, and shall proceed to liquidate the affairs thereof, as hereinafter provided. The commissioner, or a duly appointed agent, shall collect all debts due and claims belonging to the state trust company, by suit, if necessary; and, by motion in the pending action, and, upon authority of an order of the presiding chancellor of the district, may sell, compromise or compound any bad or doubtful debt or claim, and may upon such order, sell the real and personal property of the state trust company on such terms as the order may provide or direct, except that where the sale is made under power contained in any mortgage or lien bond or other paper wherein the title is retained for sale and the terms of sale set out, sale may be made under that authority.

(b) Upon taking possession of any state trust company under this section, the commissioner and/or the duly appointed agent, shall have the possession and the right to the possession of all the property, assets, choses in action, rights and privileges of the state trust company, including the right to resign the trust or exercise the power in all papers executed to secure the payment of money in any form in which the state trust company shall have been named as trustee and/or pledgee, and such property right and privileges shall vest in the commissioner and/or duly appointed liquidating agent absolutely, for the purpose of liquidating, and sales and conveyance of the same, together with any and all other incidental rights, privileges, and powers necessary and convenient for the enjoyment of the right of conveyance and sale and for the exercise of the same. Upon the motion made, the state trust company or any person interested, may be heard, but the chancellor hearing the motion shall enter an order as in the chancellor's discretion will best serve the parties interested.

(c) The officers and directors of any state trust company, or any state trust company that is in liquidation as provided by law, shall not hereafter exercise any powers herein declared to be vested in the commissioner, and/or the duly appointed liquidating agent.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

§ 81-27-8.108. Bond of the commissioner; surety; condition; minimum penalty.

Upon taking possession of any state trust company, the commissioner, or a duly appointed agent shall execute and file a bond payable to this state, with some surety company as surety thereon, with the chancery clerk of the county where the state trust company is located, conditioned upon the faithful performance of all duties imposed by reason of the liquidation of such state trust company by the commissioner, or duly appointed agent assisting in the liquidation of a state trust company, the penal sum of the bond to be fixed by order of the commissioner, which in no case shall be less than Fifty Thousand Dollars ($50,000.00). Any person interested, by motion in the pending action, shall be heard by the presiding chancellor of the district as to the sufficiency of the bond; the chancellor hearing the motion may thereupon fix the bond.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

§ 81-27-8.109. Inventory.

Within thirty (30) days after the filing of the notice of the taking possession of a state trust company in the office of the chancery clerk, the commissioner, or a duly appointed agent, shall file an inventory of the assets and liabilities of such state trust company. A copy of the inventory shall be filed with the chancery clerk in the pending action and a copy shall be kept on file in the state trust company. The inventory shall be open for inspection during the usual business hours, provided that nothing herein shall require the state trust company to remain open unnecessarily.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

§ 81-27-8.110. Notice and time for filing claims.

Notice shall be given by advertisement once a week for four (4) consecutive weeks in a newspaper published in the county where the state trust company is located, or if no newspaper is published in the county, then in some newspaper having a general circulation in the county, calling on all persons who may have claims against the state trust company to present the same to the commissioner at the office of the state trust company, and within the time to be specified in the notice which time shall not be less than ninety (90) days from the date of the first publication. A copy of this notice shall be mailed to all persons whose names appear as creditors upon the books of the state trust company. Affidavit by the commissioner, or agent mailing the notice, to the effect that the notice was mailed shall be conclusive evidence thereof.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

§ 81-27-8.111. Power to reject claims; notice; affidavit of service; action on claims.

If the commissioner, or a duly appointed agent, doubts the validity of any claim, the commissioner or agent may reject the same and serve notice of such rejection upon the claimant, either personally or by registered mail, and an affidavit of the service of such notice shall be filed in the office of the chancery clerk in the pending action, and shall be conclusive evidence of such notice. Any action or suit upon rejected claim must be brought by the claimant against the commissioner or agent, in the chancery court of the county in which the state trust company is located within ninety (90) days after such service, or the same shall be barred. Objections to any claim not rejected by the commissioner, or the duly appointed agent, may be made by any person interested by filing such objection in the pending action and by serving a copy thereof on the commissioner, or duly appointed agent, and the commissioner, or duly appointed agent, after investigation, shall either allow such objection and reject the claim, or disallow the objection. If the objection is not allowed and the claim not rejected, the commissioner, or the duly appointed agent, shall file a notice to this effect in the pending action; and within ten (10) days thereafter, the person filing objection by motion in the pending action, a copy of which notice shall be served upon the person whose claim or deposit is objected to, and present to the court the question of the validity of the claim; and the questions of law and issues of fact shall thereupon be determined as in other civil actions.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

§ 81-27-8.112. List of claims presented and deposits; copies; proviso.

Upon the expiration of the time fixed for presentation of claims, the commissioner, or the duly appointed agent, shall make a full and complete list of the claims presented, including and specifying any claims which have been rejected. One (1) copy shall be filed in the office of the chancery clerk in the pending action, and one (1) copy shall be kept on file with the inventory in the office of the state trust company for examination. Any claim which may be presented after the expiration of the time fixed for the presentation of claims in the notice hereinbefore provided shall, if allowed, share pro rata in the distribution only of those assets of the state trust company in the hands of the commissioner, and undistributed at the time the claim is presented. However, when it is made to appear to the presiding chancellor in the district, that the claim could not have been filed within that period, the chancellor may permit those creditors or depositors who subsequently file their claim to share as other creditors.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

§ 81-27-8.113. Declaration of dividends; order of preference in distribution.

At any time after the expiration of the date fixed by the commissioner, or the duly appointed agent, for the presentation of claims against the state trust company, and from time-to-time thereafter, the commissioner, out of the funds in the hands of the commissioner, after the payment of expenses and priorities, may declare and pay dividends to the shareholders or participants and other creditors of such state trust company in the order now or hereafter provided by law; and a dividend may be declared when and as often as the funds on hand subject to the payment of dividends shall be sufficient to pay ten percent (10%) of all claims entitled to share in such dividends. In paying dividends and calculating the same, all disputed claims shall be taken into account, but no dividend shall be paid upon such disputed claims until the same shall have been finally determined. The following shall be the order and preference in the distribution of the assets of any state trust company liquidated hereunder:

(1) Taxes and fees due the commissioner for examination or other services;

(2) Wages and salaries due officers and employees of the state trust company, for a period of not more than four (4) months;

(3) Expenses of liquidation;

(4) Amounts due creditors other than stockholders or participants.

The word "asset" used herein shall not be deemed to include bailments or other property to which the state trust company has no title. A statement of all dividends paid shall be filed in the office of the chancery clerk in the pending action, and such statements shall show the expenses deducted and the disputed claims in determining the dividend.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

§ 81-27-8.114. Deposit of funds collected.

All funds collected by the commissioner, in liquidating any state trust company, shall be deposited from time-to-time in a bank as may be selected by the commissioner, and shall be subject to the check of the commissioner.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

§ 81-27-8.115. Employment of counsel; accountants; and other experts; compensation.

The commissioner, for the purpose of liquidating state trust companies as herein provided, shall employ such liquidating agents, competent local attorneys, accountants and clerks as may be necessary to properly liquidate and distribute the assets of a state trust company, and shall fix the compensation for all such agents, attorneys, accountants and clerks, and shall pay the same out of the funds derived from the liquidation of the assets of the state trust company. However, all expenditure for the purpose herein provided shall be approved by the presiding chancellor in the pending action at such time as the same may be reported, and such charges shall be a proper charge and lien on the assets of the state trust company until paid.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

§ 81-27-8.116. Unclaimed dividends held in trust.

Any unclaimed dividends remaining in the hands of the commissioner for six (6) months after the order for final distributions shall be held in trust for the several creditors of the liquidated state trust company; and the money so held by the commissioner shall be paid over to the persons respectively entitled thereto as and when satisfactory evidence of their right to the same is furnished. In case of doubtful or conflicting claims the commissioner shall have authority to apply to the chancery court, by motion in the pending action, for an order from the chancellor of the district directing the payment of the moneys so claimed. When issues of fact are raised by motion, the same may, upon request of any claimant, be determined as in other civil actions. The interest earned on the unclaimed dividend so held shall be applied toward defraying the expenses incurred in the distribution of such unclaimed dividends. The balance of interest, if any, shall be deposited and held as other funds to the credit of the commissioner. After the commissioner has held the unclaimed dividends held in trust under the provisions of this statute for the creditors of the liquidated state trust company for a period of ten (10) years, the commissioner may pay the principal amount of such unclaimed dividends to the State Treasurer, to be held by the State Treasurer without liability for profit or interest until a just claim therefor shall be made by the parties entitled thereto. Upon payment of unclaimed dividends to the State Treasurer, the commissioner shall be fully discharged from all further liability therefor.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

§ 81-27-8.117. Action by the commissioner following full settlement.

Whenever the commissioner shall have paid all the expenses of liquidation and shall have paid to each and every creditor of such state trust company, whose claims shall have been duly proven and allowed, the full amount of such claims, and shall have made proper provision for unclaimed and unpaid and disputed claims, and shall have in hand other assets of the state trust company, the commissioner shall call a meeting of the shareholders or participants of the state trust company by giving notice thereof by publication once a week for four (4) consecutive weeks in a newspaper published in the county, or if no newspaper is published in the county, then in a newspaper having general circulation in the county, and by mailing a copy of such notice to each shareholder's or participant's address as the same shall appear upon the books of the state trust company. Affidavit of the mailing of the notice herein required and of the printer as to the publication shall be conclusive evidence of notice hereunder. At such meeting any shareholders or participants may be represented by proxy and the shareholders or participants shall elect, by a majority vote of the stock present, an agent or agents who shall be authorized to receive from the commissioner all the assets of the state trust company then remaining in the commissioner's hands; and the commissioner shall cause to be transferred and delivered to the agent, or agents, all such assets of the state trust company. The commissioner shall thereupon cause to be filed in the office of the chancery clerk in the pending actions a full and complete report of all his transactions, showing the assets of the state trust company so transferred, together with the name of the agent or agents receipting for the same; and the filing of such report shall act as a full and complete discharge of the commissioner from all further liabilities by reason of the liquidation of the state trust company. Such agent, or agents, shall convert the assets coming into his or her hands, or their hands, into cash, and shall make distribution to the shareholders or participants of the state trust company as herein provided. The agent, or agents, shall file semiannually a report of all transactions with the chancery court of the county in which the state trust company is located, and with the commissioner, and shall be allowed for such services such fees not in excess of five percent (5%), as may be fixed by the court. In case of death, removal or refusal to act, of any agent or agents elected by the shareholders or participants, the commissioner shall, upon report of such action on the part of such agent or agents to the chancery court of the county in which the state trust company is located, turn over to the chancery court for the stockholders of the state trust company, all the remaining assets of the state trust company, file the required report and be discharged from any and all further liability to the shareholders or participants as herein provided. The assets, when turned over to the chancery court hereunder, shall remain in the hands of the court until such time as, by court order or by action of the shareholders or participants, distribution shall be provided for.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

§ 81-27-8.118. Annual report of the commissioner; items included.

The commissioner shall file, as a part of an annual report to the Governor, a list of the names of the state trust companies of which possession was taken and liquidated; and the commissioner shall, from time-to-time compile and make available for public inspection, reports showing the condition of each and all such state trust companies; and the annual report of the commissioner shall show the sum of unclaimed assets, with respect to each state trust company, and shall show all depositories of all sums coming into the hands of the commissioner under the provisions of this section.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

§ 81-27-8.119. Compensation of the commissioner.

The commissioner, for services rendered in connection with the liquidation of state trust companies hereunder, shall be entitled to actual expenses incurred in connection with the liquidation of each state trust company, including therein a reasonable sum for the time of the examiners and other agents of the commissioner, which expenses shall be a prior lien on the assets of such state trust company so liquidated until paid in full; and the commissioner shall have authority to prescribe reasonable rules and regulations for fixing such expenses.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

§ 81-27-8.120. Exclusive method of liquidation.

No state trust company created before July 1, 1998, shall be liquidated in any other way or manner than that provided in this chapter.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

§ 81-27-8.121. Disposition of books and records.

All books, papers and records of a state trust company which has been finally liquidated shall be deposited by the receiver in the office of the chancery clerk for the county in which the office of such state trust company is located, or in such other place as in the receiver's judgment will provide for the proper safekeeping and protection of such books, papers, and records. The books, papers, and records herein referred to shall be held subject to the orders of the commissioner and the chancery clerk of the county in which such state trust company was located.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

§ 81-27-8.122. Destruction of books and records.

After the expiration of five (5) years from the date of filing in the office of the chancery clerk of a final order approving the liquidation by the commissioner of any insolvent state trust company and the delivery to the clerk or into the clerk's custody of the records of such state trust company, the same may be destroyed by the chancery clerk.

After five (5) years from the filing by the commissioner of a final report of liquidation of any insolvent state trust company, the commissioner may destroy the records of any insolvent state trust company held in the office of the commissioner in connection with the liquidation of such state trust company. However, in connection with any unpaid dividends the commissioner shall preserve the records or other evidence of indebtedness of the trust company with reference to the unpaid dividend until the dividend shall have been paid.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

§ 81-27-8.123. Trust terminated on insolvency of state trust company.

Whenever any state trust company created under the laws of this state, which has heretofore been, or shall hereafter be, appointed trustee in any indenture, deed of trust or other instrument of like character, executed to secure the payment of any bonds, notes or other evidences of indebtedness, has been or shall be by reason of insolvency, or for any other cause provided by law, taken over for liquidation by the commissioner or by any other legally reconstituted authority, the powers and duties of such state trust company as trustee in any such instrument shall, upon the entry of an order of the chancery clerk of the court appointing a successor trustee, upon a petition as hereinafter provided, immediately cease and terminate.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

§ 81-27-8.124. Petition for new trustee.

In all cases of insolvency and liquidation provided in this article, the chancery clerk of any county in which such indenture, deed of trust or other instrument of like character is recorded, shall, upon the verified petition of any person interested in any such trust, either as trustee, beneficiary or otherwise, which interest shall be set out in the petition, enter an order directing service on all interested parties either personally or by the publication in some newspaper published in the county, or in some adjoining county if no newspaper is published in the county where such application is made, a notice directed to all persons concerned, commanding and requiring all persons having any interest in the trust, appear in the clerk's office at a day designated in the order and notice, not less than thirty (30) days from the date thereof, and show cause why a new trustee shall not be appointed.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

§ 81-27-8.125. Publication and notice.

Such notice shall be published in the manner required by law for service of summons by publication, and shall set forth the names of the parties to the indenture deed of trust, or other such instrument, the date thereof, and the place or places where the same is recorded.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

§ 81-27-8.126. Appointment where no objection made.

If, upon the day fixed in the notice, no person appears and objects to the appointment of a substitute trustee, the clerk shall, upon such terms the clerk deems advisable and in the best interest of all parties, appoint some competent person, or corporation authorized to act as, substitute trustee. The substitute trustee shall be vested with and shall exercise all the powers reconferred upon the trustee named in this instrument.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

§ 81-27-8.127. Hearing upon objection.

If objections are made to the appointment of a new trustee, the clerk shall hear and determine the matter, and from the clerk's decision an appeal may be prosecuted as in the case of special proceedings generally.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

§ 81-27-8.128. Registration of final order.

The final order of appointment of a new trustee shall be certified by the clerk in an order which shall be recorded in the office of the register of deeds in the county or counties in which the instrument under which the appointment has been made was recorded, and a notation of the same shall be entered by the register of deeds on the margin of the record where the original instrument was recorded.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

§ 81-27-8.129. Petition and order applicable to all instruments.

The petition and the order appointing a new trustee may include, relate and apply to any number of indentures, deeds of trust or other instruments, wherein the same trustee is named.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

§ 81-27-8.130. Additional remedy.

Sections 81-27-8.124 and 81-27-8.129 shall be in addition to and not in substitution for any other remedy provided by law.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

§ 81-27-8.131. Report to the Secretary of State.

The commissioner shall on or before the first day of each year thereafter file with the Secretary of State a report showing all state trust companies under liquidation in this state, and the names of any and all auditors together with the amounts paid to them for auditing each of the state trust companies, and the names of any and all attorneys employed in connection with the liquidation of the state trust companies together with the amount paid or contracted to be paid to each of the attorneys. If any attorney has been employed on a fee contingent upon recovery, the report must state in substance the contract.

Within five (5) days from the receipt of the report the Secretary of State shall cause the same to be published one (1) time in some newspaper published in each county in which a state trust company or state trust companies are under liquidation. If there is no newspaper published in the county, the Secretary of State shall cause a copy of the report to be posted at the courthouse door in the county.

SOURCES: Laws, 1998, ch. 437, § 1, eff from and after July 1, 1998.

CHAPTER 29

Lender Trade Name and Trademark Use

Sec.
81-29-1. Definitions.
81-29-3. Use of lender's trade name or trademark or specific loan information by other than the lender prohibited except under certain circumstances; injunction for violation.

§ 81-29-1. Definitions.

For purposes of this chapter, the following terms shall have the following meanings:

(a) "Lender" means a bank, savings bank, savings and loan association, credit union, small loan company, finance company, mortgage company, mortgage broker or other person who makes or services loans in this state, and any affiliate thereof, or any third party operating with the consent of the lender. A person shall not be considered a lender based on the person's former employment with the lender.

(b) "Person" means any individual, firm, corporation, partnership, organization, association or other legal entity.

SOURCES: Laws, 2008, ch. 370, § 1, eff from and after July 1, 2008.

Cross References — Registration of trademarks and labels generally, see §§ 75-25-1 et seq.

§ 81-29-3. Use of lender's trade name or trademark or specific loan information by other than the lender prohibited except under certain circumstances; injunction for violation.

(1) A person other than the owner of the trade name or trademark may not use a trade name or trademark of a lender or a trade name or trademark confusingly similar to that of a lender in a solicitation for the offering of services or products without the written consent of the lender, unless the solicitation clearly and conspicuously states in boldfaced type on the front page of the correspondence containing the solicitation all of the following:

(a) The name, address and telephone number of the person making the solicitation.

(b) That the person making the solicitation is not affiliated with the lender.

(c) That the solicitation is not authorized or sponsored by the lender.

(d) That the loan information referenced was not provided by the lender.

(2) A person may not use a loan number, loan amount or other specific loan information that is not publicly available in a solicitation for the purchase of services or products. However, the prohibition does not apply to the use by a lender or its affiliates in communications with a current or former customer

of the lender of a loan number, loan amount or other specific loan information derived from the business relationship between the lender and the current or former customer.

(3)(a) A person other than the lender may not use a loan number, loan amount or other specific loan information that is publicly available in a solicitation for the purchase of services or products unless the solicitation clearly and conspicuously states in boldfaced type on the front page of the correspondence containing the solicitation all of the following:

(i) The name, address and telephone number of the person making the solicitation.

(ii) That the person making the solicitation is not affiliated with the lender.

(iii) That the solicitation is not authorized or sponsored by the lender.

(iv) That the loan information referenced was not provided by the lender.

(b) The prohibition in paragraph (a) does not apply to the use by a lender or its affiliates in communications with a current or former customer of the lender of a loan number, loan amount or other specific loan information derived from the business relationship between the lender and the current or former customer.

(4) Any reference to a lender without consent of the lender as required by this chapter and any reference to a loan number, loan amount or other specific loan information appearing on the outside of an envelope, visible through the envelope window, or on a postcard, in connection with any written communication that includes or contains a solicitation for services or products is prohibited.

(5) It is not a violation of this chapter for a person to use the trade name of another lender in an advertisement for services or products to compare the services or products offered by the other lender.

(6) A lender or owner of a trade name or trademark may seek an injunction against a person who violates this section to stop the unlawful use of the trade name, trademark or loan information. The person seeking the injunction shall not be required to prove actual damage as a result of the violation. Irreparable harm to the lender or owner shall be presumed. The lender or owner seeking the injunction may seek to recover actual damages and any profits the defendant has accrued as a result of the violation. The prevailing party in any action brought under this subsection is entitled to recover costs associated with the action and reasonable attorney fees from the other party.

SOURCES: Laws, 2008, ch. 370, § 2, eff from and after July 1, 2008.

Cross References — Registration of trademarks and labels generally, see §§ 75-25-1 et seq.

Index

A

ACCOUNTS AND ACCOUNTING.
Accounts payable at death.
  Establishment by bank, §81-5-62.
Debt management services.
  Escrow account.
    Deposit of consumer funds, §81-22-9.
Payable on death accounts.
  Establishment by bank, §81-5-62.
POD accounts.
  Establishment by bank, §81-5-62.
Savings accounts.
  Savings associations generally, §§81-12-115 to 81-12-151.

ACCOUNTS PAYABLE AT DEATH.
Establishment by bank, §81-5-62.
Savings accounts at savings institutions, §81-12-145.
Savings banks, §81-14-363.

ACTIONS.
Consumer loan brokers.
  Borrower injured by violation, §81-19-23.

ADVERSE CLAIMS TO BANK ACCOUNTS.
Recognition by bank, requirements, §81-5-67.
Recognition by savings associations, §81-12-127.
Savings banks, recognition, §81-14-379.

ADVERTISING.
Consumer loan brokers.
  Prohibited activities, §81-19-23.
Debt management services, §81-22-21.
False advertising.
  Savings bank business, §81-14-173.
Mortgage loans.
  Mortgage brokers, lenders, loan originators, §81-18-31.
Savings associations.
  Deposits of money from public, §81-12-201.

AFFIDAVITS.
Savings association savings account holders.
  Lost or destroyed account book or certificate, §81-12-123.

AGENTS.
Banks and banking.
  Dissolution of solvent bank, §81-5-101.
Dissolution of solvent bank.
  Appointment of special agent to liquidate, §81-5-101.
Proxies.
  Savings banks.
    Voting rights exercised by proxy, §81-14-259.

AGRICULTURAL CREDIT COOPERATIVE ASSOCIATIONS, §§81-15-1 to 81-15-31.

AGRICULTURAL CREDIT CORPORATIONS, §§81-15-1 to 81-15-31.
Acquiring, purchasing or leasing warehouse, §81-15-25.
Amendment of bylaws, §81-15-11.
Articles of association, §81-15-9.
Banks forming, §81-15-9.
Borrowing money from federal intermediate credit bank, §81-15-15.
Bylaws, §81-15-9.
  Amendment, §81-15-11.
Capital stock, §81-15-9.
  Capital stock invested for organization, expenses, etc., limitation on, §81-15-19.
  Capital stock required.
    Doing business of making advances for agricultural purposes, §81-15-31.
Contracting with warehouse, §81-15-27.
Discounting or selling paper to federal intermediate credit bank, §81-15-13.
Discount of note or other obligation.
  Approval of federal farm loan board, §81-15-15.
Exemptions from taxation.
  Loaned money, §81-15-29.
Federal farm loan board approval to discount notes, §81-15-17.
Federal intermediate credit bank.
  Borrowing money from, §81-15-15.
  Credit facilities made available to agricultural and livestock interest, §81-15-3.

AGRICULTURAL CREDIT CORPORATIONS —Cont'd
Federal intermediate credit bank —Cont'd
  Discounting or selling paper to, §81-15-13.
Investment of capital stock for organization, expenses, etc., limitation on, §81-15-19.
Liability of officers, directors and stockholders, §81-15-21.
Loaned money exempt from taxation, §81-15-29.
Making advances for agricultural purposes.
  Requirements for doing business, §81-15-31.
Mississippi rural credit law, §81-15-1.
National farm loan associations.
  Organizing as agricultural credit cooperative associations, §81-15-7.
Number of incorporators required, §81-15-7.
Number of persons required to form agricultural credit cooperative association, §81-15-7.
Organization defined, §81-15-5.
Powers, §81-15-23.
Purposes of provisions, §81-15-3.
Tax exemptions.
  Loaned money, §81-15-29.
Warehouses.
  Acquiring, purchasing, owning or leasing and controlling, §81-15-25.
  Contracting with, §81-15-27.

AGRICULTURE.
Agricultural credit corporations, §§81-15-1 to 81-15-31.
Credit corporations, §§81-15-1 to 81-15-31.
Farmers' credit associations, §§81-17-1 to 81-17-25.

ANNEXATION.
Branch banks, §81-7-11.

ANNUAL REPORTS BY SAVINGS ASSOCIATIONS, §81-12-177.

ANSWERS.
Trust companies.
  Takeover by commissioner.
    Answer to notice of seizure, §81-27-8.106.

APPEALS.
Banks and financial institutions.
  Cease and desist orders, §81-1-129.

APPEALS —Cont'd
Banks and financial institutions —Cont'd
  Denial of certificate of incorporation, §81-3-13.
Cease and desist orders.
  Banks and financial institutions, §81-1-129.
Consumer loan brokers.
  Denial or revocation of license, §81-19-35.
Savings associations.
  Cease and desist orders, §81-12-219.
  Final decisions by commissioner or state board of banking review, §81-12-205.
  Final determinations by commissioner, §81-12-9.
Savings banks.
  Final decision on application to organize, §81-14-69.
  Final rule, regulation or order of commissioner, §81-14-175.
Trust companies.
  Administrative orders and civil penalties issued by commissioner, §81-27-7.105.
  Final decisions of commissioner generally, §81-27-4.108.
  Takeover by commissioner, §81-27-8.106.

APPRAISALS AND APPRAISERS.
Savings associations.
  Purchase of real estate, §81-12-105.
Savings banks.
  Test appraisals of collateral for loans, §81-14-163.

ASSESSMENTS.
Banks and financial institutions.
  Maintenance of department of banking and consumer finance, §81-1-107.

ASSOCIATIONS.
Clearinghouse associations.
  Bank or banking institutions establishing, §81-5-93.
    Powers, §81-5-95.
Farmers' credit associations, §§81-17-1 to 81-17-25.
Savings associations, §§81-12-1 to 81-12-229.

ATMS.
Establishment of electronic banking terminals, §81-5-100.
  Credit unions, §81-13-62.

ATTORNEY GENERAL.
Department of banking and consumer finance.
  Legal advisor to department, §81-1-79.

ATTORNEYS AT LAW.
Mortgage loan licensing and regulation.
  S.A.F.E. mortgage act.
    Exemption, §81-18-5.
Savings associations.
  Investing in real estate loans.
    Borrower's right to select attorney and pay attorney selected, §§81-12-163, 81-12-165.
Savings bank loans.
  Selection of own attorney, notice prior to loans, §81-14-307.

ATTORNEYS' FEES.
Consumer loan brokers.
  Action by injured borrower against broker, §81-19-23.
Insurance premium finance companies.
  Charges for, §81-21-17.

AUDITS AND AUDITORS.
Credit unions.
  Supervisory committee, §81-13-33.
Department of banking and consumer finance.
  State department of audit to conduct, §81-1-71.
Savings associations, §81-12-177.
Savings banks.
  Annual audit requirement, §81-14-171.

AUTOMATED TELLER MACHINES.
Establishment of electronic banking terminals, §81-5-100.
  Credit unions, §81-13-62.

AUTOMATIC TELLER MACHINES.
Credit unions.
  Establishment of electronic banking terminals, §81-13-62.
Establishment of electronic banking terminals, §81-5-100.

B

BAD CHECKS.
Savings banks.
  Collection of processing fee for returned checks, §81-14-365.

BAILMENTS.
Safe deposit boxes.
  Lease to minors, §81-5-61.

BANK DEPOSITOR INFORMATION PRIVACY, §81-5-55.

BANK EXAMINATIONS, §§81-1-81 to 81-1-95.

BANK HOLDING COMPANIES.
Control of bank, §81-5-28.
Defined, §81-5-28.
Fiduciary relationship.
  Directors and officers to holding company, §81-5-105.
Operation of multi-bank holding companies, §81-7-19.
Out-of-state bank holding company establishing bank in state, §§81-8-1 to 81-8-11.
  Applicability of state laws and rules and regulations, §81-8-7.
  Construction of chapter, §81-8-11.
  Cooperative agreements between department and other bank regulatory agencies, §81-8-9.
  Definitions, §81-8-1.
  Method of establishment, requirement, §81-8-3.

BANK HOLIDAYS.
Declaring in emergency cases, §81-5-1.

BANKING AND CONSUMER FINANCE DEPARTMENT, §§81-1-57 to 81-1-137.
Abuse or misuse of discretion.
  Injunctions by bank, §81-1-105.
Assessment against banks for maintenance of department, §81-1-107.
Attorney general legal advisor, §81-1-79.
Bank examiners.
  Employment by commissioner, qualifications, compensation, removal, §81-1-65.
Bank holidays.
  Commissioner declaring in emergency cases, §81-5-1.
Borrowing money from state bank directly or indirectly.
  Officers or employees of department, §81-1-77.
Call reports by banks, §81-1-97.
  Copies furnished, fee, §81-1-99.
Cease and desist orders.
  Investigation by commissioner, §81-1-103.

BANKING AND CONSUMER FINANCE DEPARTMENT —Cont'd
Cease and desist orders —Cont'd
  Suspension or removal orders issued by United States, §81-1-103.
  Unsafe or unsound practice or unfair and discriminatory practice, §81-1-119.
Certified copies accepted as original, §81-1-73.
Charge with execution of laws relating to banking business, §81-1-59.
Civil penalties.
  Assessed against banks for violations.
    Enforcement, §81-1-121.
Civil penalty assessed against director, officer or employee for violations.
  Enforcement, §81-1-123.
Commissioner, §81-1-61.
  Additional employees employed by commissioner, §81-1-65.
  Appointment by governor, §81-1-61.
  Audit of books and records, §81-1-71.
  Banking examiners.
    Employment of assistants to be known as, §81-1-65.
    Qualifications, compensation, removal, §81-1-65.
  Bond, §81-1-67.
  Copies of papers certified by deputy, §81-1-63.
  Deputy, §81-1-63.
    Certification of copies of papers, §81-1-63.
    Duties and qualifications, §81-1-63.
  Dismissal of deputy, §81-1-63.
  Information sharing agreements, §81-1-89.
  Mileage expense, §81-1-71.
  Monthly payment of salaries, §81-1-69.
  Oath of office, §81-1-67.
  Qualifications, §81-1-61.
  Removal for cause by governor, §81-1-61.
  Responsibility for acts of deputy, §81-1-63.
  Salaries fixed by legislature, §81-1-69.
  Term, §81-1-61.
  Travel expense reimbursement, §81-1-71.
  Vacancy in office, §81-1-61.
Consumer education, financial literacy programs, §81-1-137.

BANKING AND CONSUMER FINANCE DEPARTMENT —Cont'd
Consumer loan brokers.
  Licensing and regulation generally, §§81-19-1 to 81-19-35.
Creation, §81-1-59.
Credit unions.
  Generally, §§81-13-1 to 81-13-81.
Debt management services, §§81-22-1 to 81-22-31.
Definitions, §81-1-57.
Department maintenance fund.
  Assessment against bank, §81-1-107.
  Disbursements from fund, §81-1-109.
Department of savings institutions.
  Abolished, transfer of powers to department, §81-12-6.
Disclosure of records of office prohibited, §81-1-89.
Endorsing notes to state banks.
  Officers or employees, §81-1-77.
Evaluations by federal financial supervisory agency or agencies.
  Public availability, §81-1-100.
Examination of banks, §§81-1-81 to 81-1-95.
Examiners.
  Employment by commissioner, qualifications, compensation, removal, §81-1-65.
Federal cease and desist, suspension or removal of orders to state chartered banks.
  Investigation of outcome of cause or basis by commissioner, §81-1-103.
Fees charged by department for filing documents and issuing certificates, §81-1-115.
Financial literacy programs for public education, §81-1-137.
Forms provided by commissioner, §81-1-111.
Functions of abolished department and board.
  Transfer to department, §81-1-117.
Furniture, fixtures and equipment, §81-1-75.
Hearings before commissioner on charges.
  Unsafe or unsound practice or unfair and discriminatory practice, §81-1-119.
Incorporation and organization of banks generally, §§81-3-1 to 81-3-17.

BANKING AND CONSUMER FINANCE DEPARTMENT —Cont'd
Information sharing agreements, §81-1-89.
Injunction by bank against commissioner for abuse or misuse of discretion, §81-1-105.
Insolvent banks.
  Generally, §§81-9-1 to 81-9-75.
Insurance premium finance companies.
  Licensing and regulation generally, §§81-21-1 to 81-21-27.
International banking act, §§81-25-1 to 81-25-203.
Location of office, §81-1-59.
Notice of charges to employee of bank participating in violation, §81-1-127.
Notice of charges to person or institution, §81-1-119.
Postage expenses, §81-1-75.
Purchase of furniture, fixtures and equipment, §81-1-75.
Record books provided, §81-1-111.
Records of office, §81-1-89.
Removal of original papers from files of department, §81-1-73.
Report to legislature by commissioner, §81-1-113.
Savings association law, §§81-12-1 to 81-12-229.
Savings banks.
  Generally, §§81-14-1 to 81-14-403.
Savings institution board.
  Abolished, transfer of powers to department, §81-12-6.
  Commissioner to have same rights, powers and privileges of board, §81-12-7.
Sealed documents to be used in evidence, §81-1-73.
Seal of department, §81-1-73.
Special counsel to assist in handling litigation involving department, §81-1-79.
Special services rendered by commissioner, §81-1-93.
Stationery expenses, §81-1-75.
Supervisory control with regard to banks.
  Unsafe or unsound banking practices, §81-1-125.
Telephone and telegraph message expenses, §81-1-75.

BANKING AND CONSUMER FINANCE DEPARTMENT —Cont'd
Transfer of functions to department, §81-1-117.
Trust business conducted by depository institution, bank or trust company.
  Generally, §§81-27-1.001 to 81-27-8.131.
Unfair and discriminatory practices in conducting bank business.
  Notice of charge to person or institution, §81-1-119.
Unsafe or unsound banking practices.
  Notice of charge to person or institution, §81-1-119.
  Supervisory control by commissioner, §81-1-125.

BANKING EXAMINERS.
Employment by commissioner, qualifications, compensation, removal, §81-1-65.

BANKING HOURS, §81-5-97.

BANKRUPTCY AND INSOLVENCY.
Bank insolvency, §§81-9-1 to 81-9-75.
Savings banks.
  Takeover by commissioner, §81-14-211.
Trust companies.
  Involuntary dissolution and liquidation, §§81-27-8.101 to 81-27-8.131.
  Trust company appointed as trustee in indenture, deed of trust or other instruments.
    Appointment of new trustee, §§81-27-8.123 to 81-27-8.130.

BANKS AND FINANCIAL INSTITUTIONS.
Acceptance of drafts or bills of exchange.
  Having more than six month sight to run, §81-5-89.
Accepting bills from single entity, limitation, §81-5-89.
Accounts and name of administrator, executor, guardian, trustee or other fiduciary and trust, §81-5-34.
Accounts payable at death, establishing, §81-5-62.
Adverse claims to deposits.
  Bank recognition, requirements, §81-5-67.

BANKS AND FINANCIAL INSTITUTIONS —Cont'd
Agents dealing with bank.
  Bank not deemed to have notice or be obligated to inquire as to lack of or limitation upon power, §81-5-53.
Agricultural credit corporations, §§81-15-1 to 81-15-31.
Amendment of charter or articles of incorporation, §81-3-15.
Appeal of denial of certificate of incorporation, §81-3-13.
Applicability of private corporation laws to state banks, §81-5-2.
Articles of incorporation, §81-3-7.
  Fee for filing, §81-1-115.
  Renewal and amendment, §81-3-15.
Assessment against banks for maintenance of department, §81-1-107.
Assessment for maintenance of department.
  Corporations organized under banking laws subject to, §81-3-3.
Assets held in fiduciary capacity.
  Segregation, separate set of books and records, §81-5-33.
ATM.
  Establishment of electronic banking terminals, §81-5-100.
Automated teller machines.
  Establishment of electronic banking terminals, §81-5-100.
Automatic data processing computer.
  Computers and related machinery and equipment.
    Purchasing, leasing or otherwise requiring, §81-5-1.
Background checks of consumer industry licensees.
  Multistate licensing system, §81-1-135.
Bank defined, §81-3-1.
Bank holidays.
  Declaring in emergency cases, §81-5-1.
Bills issued in excess of three times capital and surplus, §81-5-83.
Bond of officer and employee, §81-5-15.
Borrowing power, limitation, §81-5-83.
Branch banks.
  Fee for filing application, §81-1-115.
  General provisions, §§81-7-1 to 81-7-23.

BANKS AND FINANCIAL INSTITUTIONS —Cont'd
Branch banks —Cont'd
  Interstate bank branching, §§81-23-1 to 81-23-25.
Burglary, insurance protection, §81-5-15.
Bylaws.
  Adoption by banking corporations, §81-3-7.
Call reports, §81-1-97.
  Copy, fee, failure to issue copy, §81-1-99.
Capital stock.
  Authorized but unissued, increasing, §81-3-9.
  Minimum amount required, §81-3-11.
  Payment in full before transacting business, §81-3-9.
  Restoration of capital, closure upon failure to restore, liquidation, §81-9-1.
Cease and desist orders.
  Appeal of orders, §81-1-129.
  Civil penalty for director, officer or employee violating, §81-1-123.
  Civil penalty for violating, §81-1-121.
  Unsafe or unsound practice or unfair and discriminatory practice, §81-1-119.
Certificate authorizing bank to commence business, §81-3-13.
Certificate of incorporation.
  Fee for issuing, §81-1-115.
Certificate to incorporate and organize, §81-3-13.
Certifying checks.
  Amount required to stand to credit of drawer on books of bank, §81-5-71.
Charging amount of checks certified to drawer's account, §81-5-71.
Checking accounts.
  Month and year account opened to be printed on face of checks, §81-5-56.
Civil penalties.
  Holding excess deposits, §81-5-57.
  Violations of provisions, §81-1-121.
    Director, officer or employee violating provisions, §81-1-123.
Clearinghouse associations, establishing, §81-5-93.
  Powers of clearinghouse, §81-5-95.
Closing bank with impaired capital stock, §81-9-1.

BANKS AND FINANCIAL INSTITUTIONS —Cont'd

Closing doors for business during week, §81-5-97.

Closing insolvent banks, §§81-9-1 to 81-9-5.

Computers, related machinery and equipment.
  Purchasing, leasing or requiring, §81-5-1.

Confidentiality of depositor information, §81-5-55.

Conservators.
  Bonds or other security when acting as conservator, §81-5-35.

Consolidation of banks, §81-5-85.
  Interstate bank branching, §§81-23-1 to 81-23-25.

Consumer industry licensees.
  Multistate licensing system, §81-1-135.

Consumer loan brokers, §§81-19-1 to 81-19-35.

Continuance of business after expiration date, §81-3-7.

Control of banks.
  Bank holding companies, §81-5-28.
  Corporations formed to purchase, hold and own bank assets, §81-5-29.

Conversion from national bank to state bank.
  Fee for filing application, §81-1-115.

Conversion into state chartered bank, §81-5-85.

Corporation defined, §81-3-1.

Corporations formed to purchase, hold and own bank assets, §81-5-29.

Credit unions, §§81-13-1 to 81-13-81.

Criminal penalty generally for violations by banker, officer, employee, director or agent, §81-5-103.

Cumulative penalties, fines and remedies, §81-1-133.

Deceased depositors accounts to be reported, §81-5-65.

Definitions.
  Bank holding companies, §81-5-28.

Department maintenance fund.
  Assessment against banks for fund, §81-1-107.

Department of banking and consumer finance, §§81-1-57 to 81-1-137.

BANKS AND FINANCIAL INSTITUTIONS —Cont'd

Deposit of minor or other person under disability in his or her name.
  Payment of money on check or order of such person, §81-5-59.

Depositor information, disclosure, §81-5-55.

Depository financial institutions self-evaluation reports, §§81-5-151, 81-5-153.

Deposits in excess of paid up capital, surplus, undivided profits and reserves.
  Limitation on holding, §81-5-57.

Deposits in name of two or more persons.
  Payment to survivor, §81-5-63.

Deposits to induce making of unsound loans, §81-5-81.

Directors.
  Contract or option provided for sale of director's stock.
    Director ceasing to be director, §81-5-47.
  Executive and auditing committee.
    Meeting, §81-5-45.
  Faith and diligent performance of duties, oath, §81-5-45.
  Fiduciary relationship to bank, §81-5-105.
  Good faith performance of duties, protection, §81-5-105.
  Holding directorship in more than one bank prohibited, §81-5-49.
  Interlocking directorates prohibited, §81-5-49.
  Loans to directors or executive officers, §81-5-51.
  Meetings, §81-5-45.
  Number, §81-3-9.
  Oath of faithful and diligent performance of duties, §81-5-45.
  Ownership of stock requirement, §81-5-45.
  Reliance in good faith upon information, protection, §81-5-105.
  Results of examinations by board and committees.
    Entry in minutes of bank, §81-5-45.

Disclosure of depositor information, §81-5-55.

Discounting state, county, municipal, district or other public certificates, §81-5-1.

BANKS AND FINANCIAL INSTITUTIONS —Cont'd
Dissolution of solvent bank, §81-5-101.
Drive-in teller windows.
  Considered branch bank, §81-5-98.
  Fee for filing application, §81-1-115.
Earned surplus requirement, §81-3-11.
Electronic banking terminals, establishing, §81-5-100.
Electronic terminals.
  Fee for filing application, §81-1-115.
Evaluations by federal financial supervisory agency or agencies.
  Public availability, §81-1-100.
Examination of banks, §§81-1-81 to 81-1-95.
  Acceptance of examination performed by federal deposit insurance corporation or federal reserve bank, §81-1-81.
  Apportionment of work among examiners, §81-1-81.
  Charging off certain items, §81-1-91.
  Civil penalty for failure to publish new statement, §81-1-95.
  Credit in excess of sound value for note or security past due, §81-1-91.
  Credit of bond in excess of real value, §81-1-91.
  Employment of state banking examiners, §81-1-65.
  Examination of officers, agents, etc., under oath, §81-1-85.
  False statements by officer, agent, etc., under oath, §81-1-85.
  Frequency of examination, §81-1-81.
  New statement ordered for finding of material changes or errors, §81-1-95.
  Past due paper, credit for, §81-1-91.
  Powers and duties of officer making, §81-1-83.
  Public statement of bank materially wrong, new statement ordered, §81-1-95.
  Records of acts, matters and things done by commissioner and examiner, §81-1-89.
  Refusal to commissioner or examiner of papers, securities, etc.
    Banks subject to liquidation, §81-1-83.

BANKS AND FINANCIAL INSTITUTIONS —Cont'd
Examination of banks —Cont'd
  Rendering special services, §81-1-93.
  Savings associations, §81-12-177.
  Savings banks, §81-14-155.
    Access to books and records, subpoena issued by commissioner, §81-14-161.
    Credit allowed in excess of sound value, §81-14-177.
    Extended audit or examination, §81-14-159.
  Special examination, §81-1-93.
  Stenographers to transcribe testimony, §81-1-87.
  Subpoenas for witnesses or production of papers, §81-1-85.
  Testimony to be taken by stenographer, §81-1-87.
  Witnesses, compelling attendance, §81-1-85.
Excess deposits, limitation on holding, §81-5-57.
Executors and administrators.
  Accepting accounts, §81-5-34.
  Bank dealing with.
    Not deemed to have notice of or be obligated to inquire as to lack of or limitation upon power of person, §81-5-53.
  Bond or other security when bank acting in fiduciary capacity as executor or administrator, §81-5-35.
  Out-of-state bank acting in fiduciary capacity as, §81-5-43.
  Owning stock in private banking houses, §81-5-1.
Failure of director, officer or employee to perform duties.
  Criminal penalty for knowing or willful neglect, §81-5-103.
False reports or false statements by officers, directors, etc., §81-1-101.
Farmers' credit associations, §§81-17-1 to 81-17-25.
Farm loans.
  Local and regional banks authorized, §81-5-5.
Federal cease and desist, suspension or removal of orders issued to state banks.
  Investigation by commissioner, §81-1-103.

BANKS AND FINANCIAL INSTITUTIONS —Cont'd
Federal deposit insurance corporations.
  Banks to become member, §81-5-9.
Federal reserve act requirements to be observed, §81-5-13.
Federal reserve banks.
  State banks may become members, §81-5-11.
Fees charged by department for filing documents and issuing certificates, §81-1-115.
Fidelity bond furnished by officers and employees, §81-5-15.
Fiduciaries.
  Accepting fiduciary's accounts, §81-5-34.
  Bank dealing with.
    Not obligated to inquire as to lack of or limitation upon power, §81-5-53.
  Banking institution acting in fiduciary capacity.
    Authorization, §81-27-1.101.
    Bond or other security, §81-5-35.
    Registering securities in name of bank's nominee, §81-5-39.
    Uniform common trust fund law, §81-5-37.
Financial literacy programs for public education, §81-1-137.
Financial statements by employees.
  Board of directors requiring, §81-5-1.
Foreign banking corporations.
  Activities by investors not considered to be transacting or engaging in business in state, §81-5-41.
  Fiduciary capacity, out-of-state banking and trust companies acting as, §81-5-43.
Foreign banks.
  Mississippi international banking act, §§81-25-1 to 81-25-203.
Freezing-of-deposits agreement.
  Reopening closed banks, §81-9-13.
General criminal penalty for violations, §81-5-103.
General regulations, §81-5-1.
Gross negligence of director or officer.
  Personal liability, §81-5-105.
Guardian and ward.
  Accepting accounts of guardians, §81-5-34.

BANKS AND FINANCIAL INSTITUTIONS —Cont'd
Guardian and ward —Cont'd
  Bank dealing with.
    Not obligated to inquire as to lack of or limitation upon power of guardian, §81-5-53.
  Bond or other security when acting in fiduciary capacity as guardian, §81-5-35.
  Out-of-state banking company acting in fiduciary capacity as, §81-5-43.
Hearing on notice of charges against employees, §81-1-127.
Holding companies.
  Control of banks, §§81-5-28, 81-5-29.
  Operation of multi-bank holding company, §81-7-19.
  Out-of-state bank holding company.
    Establishing bank in state, §§81-8-1 to 81-8-11.
      Applicability of state laws and rules and regulations, §81-8-7.
      Construction of chapter, §81-8-11.
      Cooperative agreements between department and other bank regulatory agencies, §81-8-9.
      Definitions, §81-8-1.
      Generally, §81-8-3.
  Owning bank corporations, §81-3-17.
Hours of banking, §81-5-97.
Incorporation generally, §81-3-5.
Indemnification of fine or penalty for violation of criminal provisions.
  Prohibition, §81-1-131.
Injunctions against commissioner for abuse or misuse of discretion, §81-1-105.
Insolvent banks, §§81-9-1 to 81-9-75.
  Attorney, compensation and expenses, §81-9-39.
  Books of accounts of transactions involving assets and liabilities.
    Receiver to keep, §81-9-33.
  Borrowing money, receivers power, §81-9-25.
  Capital stock impaired, §81-9-1.
  Claims against bank.
    Notice to present, §81-9-31.
    Priority payment, §81-9-75.
    Proving generally, §81-9-31.
  Closing insolvent banks, §81-9-5.
    Examiner to be placed in charge, §81-9-7.

BANKS AND FINANCIAL INSTITUTIONS —Cont'd
Insolvent banks —Cont'd
  Closing insolvent banks —Cont'd
    Reopening banks under freezing-of-deposits agreement, §81-9-13.
  Conservation of assets of bank, §81-9-9.
  Continuation of bank as corporation until liquidated, §81-9-41.
  Custodian of affairs and assets of bank.
    Examiner in charge, §81-9-9.
  Decree of liquidation, §§81-9-45, 81-9-47.
  Discharge, petition for, §81-9-37.
  Discretion or judgment of state comptroller, approval of acts, §81-9-15.
  Dividends paid by receiver, §81-9-35.
    Notice to call for dividends, §81-9-37.
  Double liability of stockholders released, §81-9-51.
  Enjoining directors and officers of enjoining corporation, §81-9-65.
  Examiner placed in charge of closed bank, §81-9-7.
    Conservation of assets, §81-9-9.
    Custodian of affairs and assets of bank, §81-9-9.
  Federal deposit insurance corporation appointed receiver, §81-9-73.
  Freezing-of-deposits agreement.
    Reopening closed bank, §81-9-13.
  General powers of liquidating corporation, §81-9-49.
  Inventory of assets and liabilities, §81-9-33.
  Limitation on period state comptroller to remain as custodian, §81-9-15.
  Liquidating corporation.
    Activities performed without court approval, §81-9-61.
    Application to court for directions, §81-9-67.
    Bond of director, §81-9-53.
    Compensation of directors, §81-9-53.
    Compensation of liquidator and other employees, §81-9-59.
    Directions from court, application, §81-9-67.
    Dissolution after final report, §81-9-71.

BANKS AND FINANCIAL INSTITUTIONS —Cont'd
Insolvent banks —Cont'd
  Liquidating corporation —Cont'd
    Employment of liquidator, §81-9-57.
    Enjoining directors and officers, §81-9-65.
    Exercise of discretion without approval of court, §81-9-61.
    Final report, §81-9-71.
    General powers, §81-9-49.
    Minutes of proceedings of director, §81-9-69.
    Officers, §81-9-57.
    Records and books, §81-9-69.
    Release of stockholders double liability, §81-9-51.
    Removal of directors, §81-9-55.
    Sale of assets, §81-9-63.
    Vacancies among directors, §81-9-55.
  Liquidation, §§81-9-29, 81-9-41.
    General powers of liquidating corporation, §81-9-49.
    Proceedings to accomplish deposit or liquidation of banks, §81-9-43.
  Liquidator employed by liquidating corporation, §81-9-57.
    Compensation, §81-9-59.
  Notice by receiver to call for dividends, §81-9-37.
  Notice to present claims against bank, publication, §81-9-31.
  Period state comptroller to remain as custodian, limitation, §81-9-15.
  Petition for appointment of receiver, §81-9-17.
  Petition to liquidate, §§81-9-43, 81-9-45.
  Preventing application of bank assets in manner prescribe by provisions.
    Transfers and other acts in contemplation of insolvency null and void, §81-9-3.
  Priority of claims for payment against bank, §81-9-75.
  Publication of notice.
    Present claims against bank, §81-9-31.
    Unclaimed amounts on liquidation, §81-9-41.
  Receiver appointed if assets not sold, §81-9-17.
    Bond of receiver, §81-9-21.
    Books of account of transactions, §81-9-33.

BANKS AND FINANCIAL INSTITUTIONS —Cont'd
Insolvent banks —Cont'd
- Receiver appointed if assets not sold —Cont'd
  - Borrowing money, power, §81-9-25.
  - Compensation and expenses, §81-9-39.
  - Discharge, petition for, §81-9-37.
  - Dividends paid to persons entitled, §81-9-35.
  - Duties of receiver, §81-9-23.
  - Federal deposit insurance corporation as receiver, §81-9-73.
  - Final report, §81-9-37.
  - Inventory by receiver, §81-9-33.
  - Report of administration, §81-9-37.
  - Selling assets, §81-9-27.
  - Surrender to receiver, §81-9-19.
- Release of double liability of stockholder, §81-9-51.
- Reopening closed bank, §81-9-13.
- Sale of assets, §81-9-11.
  - Liquidating corporation, §81-9-63.
  - Liquidation, §81-9-29.
  - Receiver selling, §81-9-27.
- Surrender of assets to receiver, §81-9-19.
- Title of assets of bank.
  - In state comptroller, §81-9-9.
- Title of sold assets passing to purchasing bank, §81-9-11.
- Transfers by banks and other acts in contemplation of insolvency null and void, §81-9-3.
- Unclaimed amounts on liquidation, notice, §81-9-41.
- Winding up affairs, duty of receiver, §81-9-23.

Installment loans.
- Not exceeding five thousand dollars, §81-5-79.

Insurance premium finance companies, §§81-21-1 to 81-21-27.
Insurance protection and indemnity against robbery and burglary, §81-5-15.
Interest on installment loans not exceeding five thousand dollars, §81-5-79.
Interlocking directorates prohibited, §81-5-49.
International banking, §§81-25-1 to 81-25-203.

BANKS AND FINANCIAL INSTITUTIONS —Cont'd
Interstate bank branching, §§81-23-1 to 81-23-25.
Investigation by commissioner before incorporating, §81-3-13.
Investment of trust funds, §81-5-33.
Joint accounts with right of survivorship, §81-5-63.
Knowing or willful neglect to perform duties.
- General criminal penalty, §81-5-103.

Lease of safety deposit boxes.
- Lease to minor, §81-5-61.

Liability.
- Limitation of liability when dealing with agents and fiduciaries, §81-5-53.
- Stockholders, §81-5-27.

Limitation of borrowing power, §81-5-83.
Limitation on loans or extensions of credit to single borrower, §81-5-77.
Limitations upon accepting drafts or bills of exchange, §81-5-89.
Liquidating with impaired capital stock, §81-9-1.
Liquidation.
- Dissolving solvent bank, §81-5-101.
- Insolvent banks, §§81-9-1 to 81-9-75.

Loans.
- Directors and executive officers, §81-5-51.
- Loan number, loan amount, other specific loan information.
  - Use by person other than lender, §§81-29-1, 81-29-3.
- Single borrower, limitation on, §81-5-77.
- Specific loan information.
  - Use by person other than lender, §§81-29-1, 81-29-3.
- State, county, municipal and district governmental agencies, §81-5-1.
- Unsafe or unsound.
  - Third party deposits to induce bank to make, §81-5-81.

Local and regional banks for farm loans authorized, §81-5-5.
Merger, §81-5-85.
- Fee for filing article, §81-1-115.
- Interstate bank branching, §§81-23-1 to 81-23-25.

Minors.
- Leasing safe deposit boxes, §81-5-61.

BANKS AND FINANCIAL INSTITUTIONS —Cont'd
Minors —Cont'd
  Making deposits in his or her name.
    Payment of money on check or order, §81-5-59.
Month and year checking account opened.
  Printing on face of checks, §81-5-56.
Multistate licensing system for consumer industry licensees, §81-1-135.
Names.
  Bank or banking to be included in name, §81-3-3.
  Permitting person to use name in taking promissory notes, mortgages or deeds of trust, §81-5-3.
National banks.
  State chartered banks rights, powers, immunities, etc., as national bank, §81-5-1.
Notice by organizers of desire to engage in banking, §81-3-13.
Notice of charges.
  Employees participating in violation, §81-1-127.
  Unsafe or unsound practice or unfair and discriminatory practice, §81-1-119.
Number of persons required to organize into banking corporation, §81-3-5.
Officers.
  Fiduciary relationship to bank, §81-5-105.
  Personal liability to corporation, §81-5-105.
Out-of-state banks.
  Bank holding company.
    Establishing bank in Mississippi, §§81-8-1 to 81-8-11.
  International banking act, §§81-25-1 to 81-25-203.
  Interstate bank branching, §§81-23-1 to 81-23-25.
Ownership of bank assets.
  Corporations formed to purchase, hold and own, §81-5-29.
Payable on death accounts, establishing, §81-5-62.
Payment of checks drawn on bank, §81-5-1.

BANKS AND FINANCIAL INSTITUTIONS —Cont'd
Permitting use of name by person in taking promissory notes, mortgages or deeds of trust, §81-5-3.
Personal liability to corporation, §81-5-105.
Persons under disability making deposit in his or her name.
  Payment on check or order of person, §81-5-59.
POD accounts, establishing, §81-5-62.
Preferred stock, §81-5-23.
Preservation of records, §81-5-7.
Privacy of depositor information, §81-5-55.
Private corporation laws, applicability to state banks, §81-5-2.
Publication of accounts of deceased depositor, §81-5-65.
Purchasing bonds, stocks and other securities for customers, §81-5-1.
Purposes for which banking corporation created, §81-3-5.
Real estate, holding, §81-5-87.
Receivers appointed for insolvent banks, §§81-9-1 to 81-9-75.
Recognition of adverse claims to deposits, requirement, §81-5-67.
Records.
  Preservation of old records, §81-5-7.
Regional banking institutions, §§81-8-1 to 81-8-11.
Reimbursement for fine or penalty prohibited, §81-1-131.
Removal of director, officer or employee.
  Knowing participation in violation, §81-1-127.
Renewal of charter or articles of incorporation, §81-3-15.
Reopening bank closed for insolvency.
  Freezing-of-deposits agreement, §81-9-13.
Reports.
  Call reports, §81-1-97.
    Copies, fees, failure to issue copy, §81-1-99.
  Depository financial institutions self-evaluation reports, §§81-5-151, 81-5-153.
Restoration of capital stock impaired, §81-9-1.

BANKS AND FINANCIAL INSTITUTIONS —Cont'd
Retention of records, §81-5-7.
Robbery, insurance protection, §81-5-15.
Safe deposit boxes.
  Leasing to minors, §81-5-61.
Savings associations, §§81-12-1 to 81-12-229.
Savings banks, §§81-14-1 to 81-14-403.
Securities for resale.
  Participating in operation of underwriting syndicate handling, §81-5-1.
Securities held in fiduciary capacity.
  Registering securities in name of bank's nominee, §81-5-39.
Self-evaluation reports of depository financial institutions, §§81-5-151, 81-5-153.
Small business investment company stock, investments in, §81-5-25.
Small loans, §81-5-79.
Special agent in charge of liquidating bank.
  Stockholder agreement to dissolve solvent bank, §81-5-101.
Standard of care for directors and officers, §81-5-105.
Stock.
  Accept as collateral or purchase own stock, §81-5-17.
  Authorized but unissued capital stock, increasing, §81-3-9.
  Dividend upon common stock, §81-5-75.
  Minimum capital stock required, §81-3-11.
  Other bank stock not to be owned, §81-5-21.
  Payment for capital stock before transacting business, §81-3-9.
  Personal property, §81-5-17.
  Preferred stock, §81-5-23.
  Record of transfer, §81-5-19.
  Stock of other banks not to be owned, §81-5-21.
  Transfer, §81-5-17.
    Record of transfer, §81-5-19.
  Voting trust, §81-5-31.
Stockholders.
  Dissolution of solvent bank, §81-5-101.
  Liability, §81-5-27.
  Voting trust, §81-5-31.
Supervision by department.
  Corporations organized under banking laws subject to, §81-3-3.

BANKS AND FINANCIAL INSTITUTIONS —Cont'd
Supervisory control by commissioner.
  Unsafe or unsound banking practices, §81-1-125.
Surplus requirement, §81-3-11.
Temporary order of removal of director, officer or employee.
  Knowing participation in violation, §81-1-127.
Third party deposits to induce making of unsound loans, §81-5-81.
Trademark or trade name of lender.
  Use by person other than owner of trademark or trade name, §§81-29-1, 81-29-3.
Transferring funds from one state, county, municipal or district account to another, §81-5-1.
Trust accounts.
  Accepting accounts of administrators, executors, guardians, trustees and other fiduciaries, §81-5-34.
Trust business.
  Generally, §§81-27-1.001 to 81-27-8.131.
Trustees.
  Accepting accounts of trustees, §81-5-34.
  Bank acting as.
    Bond or other security, §81-5-35.
  Bank dealing with.
    Not obligated to inquire as to lack of or limitation upon power of trustee, §81-5-53.
  Out-of-state banking company acting in fiduciary capacity as, §81-5-43.
Trust powers, §81-5-33.
  Accepting accounts of administrators, executors, guardians, trustees or other fiduciaries, §81-5-34.
Two or more persons, deposit in name of.
  Payment to survivor, §81-5-63.
Unfair and discriminatory practices.
  Notice of charge, cease and desist order, §81-1-119.
Unsafe or unsound banking practices.
  Deposits by third party to induce making of unsound loans, §81-5-81.
  Notice of charge, cease and desist order, §81-1-119.

BANKS AND FINANCIAL INSTITUTIONS —Cont'd
Unsafe or unsound banking practices —Cont'd
  Notice of charges against employees, §81-1-127.
  Supervisory control by commissioner, §81-1-125.
Voting trust, §81-5-31.
Withdrawal of deposits.
  Rules and regulations promulgated by commissioner, §81-5-1.

BLANKET INDEMNITY BOND.
Savings bank, §81-14-267.

BOARDS AND COMMISSIONS.
State board of banking review, §§81-3-12, 81-3-13.

BONDS, SURETY.
Bank or trust company officer or employee.
  Fidelity bond, §81-5-15.
Banks in fiduciary capacity, §81-5-35.
Blanket indemnity bond.
  Savings bank, §81-14-267.
Commissioner and deputy commissioner of banking and consumer finance, §81-1-67.
Consumer loan broker license applicant, §81-19-9.
Debt management services, §81-22-7.
  Third party payment processors, §81-22-28.
Dissolution of solvent bank.
  Stockholders to furnish bond, §81-5-101.
Fidelity bond.
  Bank officer or employee, §81-5-15.
  Savings association's officers, attorneys, employees, agents and directors, §81-12-85.
Mortgage brokers, lenders, loan originators.
  Acquisition of interest in licensee, §81-18-19.
  License applicants, §81-18-9.
  Mortgage loan originators, §81-18-11.
Savings associations.
  Organization of mutual associations, §81-12-35.
Savings association's officers, attorneys, employees, agents and directors, §81-12-85.
Savings banks.
  Blanket indemnity bond, §81-14-267.

BONDS, SURETY —Cont'd
Trust companies.
  Directors, managers, managing participants, officers and employees, §81-27-6.210.
  Takeover by commissioner.
    Bonding of commissioner, §81-27-8.108.

BORROWING MONEY.
Consumer loan brokers, §§81-19-1 to 81-19-35.

BRANCH BANKS, §§81-7-1 to 81-7-23.
Acquisition of shares by bank holding company, §81-7-19.
Annexation of branches, §81-7-11.
Appeals from unfavorable decision as to establishment, §81-7-1.
Applicability of provisions, §81-7-23.
  Certain branches not affected, §81-7-21.
Application seeking permission to establish, §81-7-1.
Authorization to establish, §81-7-1.
Bank defined as including branch, §81-3-1.
Bank holding companies acquiring shares of bank, §81-7-19.
Branch bank de novo defined, §81-7-7.
Branch included in name, §81-7-3.
Branching de novo defined, §81-7-7.
Capital requirements, §81-7-9.
Certain branches not affected by provisions, §81-7-21.
Certificate of public convenience and necessity.
  Required to establish, §81-7-1.
Consolidation, branch resulting from, §81-7-7.
  Restriction upon establishment, §81-7-8.
Continuous operation requirement to establish, §81-7-8.
Credit unions.
  Establishment of branch offices, §81-13-60.
Definitions, §81-7-19.
De novo establishment of branch, §81-7-7.
Discontinuance or abandonment, §81-7-13.
Drive-in teller windows in branch offices.
  Considered branch bank, §81-5-98.

BRANCH BANKS —Cont'd
Establishment by national bank, §81-7-17.
Examination, §81-7-15.
Expiration of certificate to establish.
  Failure of branch bank to go into operation within time limit, §81-7-1.
Fee for filing application, §81-1-115.
General provisions relating to banks and banking, §§81-5-1 to 81-5-105.
International banking act, §§81-25-1 to 81-25-203.
Interstate bank branching, §§81-23-1 to 81-23-25.
Investigation and rendering of final decision by commissioner, §81-7-1.
Location of parent bank, determination, §81-7-8.
Merger, branch resulting from, §81-7-7.
  Restriction upon establishment, §81-7-8.
Names, §81-7-3.
National banks authorized to establish, §81-7-17.
New branches established, §81-7-7.
Notice of filing of application to establish, §81-7-1.
Out-of-state banks.
  Interstate bank branching, §§81-23-1 to 81-23-25.
Parent banks capital requirement, §81-7-9.
Protest to application to establish, §81-7-1.
Publication of notice of application to establish, §81-7-1.
Purchase, branch resulting from, §81-7-7.
  Restrictions on establishing, §81-7-8.
Removal, §81-7-13.
Restrictions upon establishing, §81-7-8.
Savings associations, branch offices, §§81-12-175, 81-12-176.
Savings banks, §81-14-83.
  Changing location, request, §81-14-85.
  Closing by order of commissioner, §81-14-87.
  Discontinuance or abandonment, consent of commissioner, §81-14-89.
Stock issued for annexation of branches, §81-7-11.

BRANCH OFFICE OF CREDIT UNION.
Establishment, §81-13-60.

BRANCH TRUST OFFICES, §81-27-2.002.
Business at branch, §81-27-2.101.

BROKERS.
Consumer loan brokers, §§81-19-1 to 81-19-35.
Mortgage brokers.
  Licensing and regulation generally, §§81-18-1 to 81-18-63.

BUILDING AND LOAN ASSOCIATIONS.
Savings associations law generally, §§81-12-1 to 81-12-229.

BURDEN OF PROOF.
Bank asserting self-assessment privilege, §81-5-153.

BURGLARY.
Banking corporation to provide insurance protection and indemnity, §81-5-15.

BUSINESS ENTITIES.
Agricultural credit corporations, §§81-15-1 to 81-15-31.
Credit unions, §§81-13-1 to 81-13-81.
Savings association, §§81-12-1 to 81-12-229.
Savings banks, §§81-14-1 to 81-14-403.
Trust companies generally, §§81-27-1.001 to 81-27-8.131.

BYLAWS.
Agricultural credit corporations, §81-15-9.
  Amendment, §81-15-11.
Credit unions, §81-13-5.
Farmers' credit associations, §81-17-21.
Savings associations, §81-12-25.
Trust companies, §81-27-6.202.

C

CALL REPORTS.
Banks, §81-1-97.
  Copies, fees, §81-1-99.
Savings associations, §81-12-79.
  Commissioner to furnish copy, §81-12-229.
Savings banks, §81-14-169.
  Copy provided by commissioner, §81-14-179.

CAPITAL NOTES.
Trust company issuing, §81-27-4.204.

CAPITAL STOCK.
Banking corporations.
  Authorized but unissued, increasing, §81-3-9.
  Impaired stock, §81-9-1.
  Minimum amount required, §81-3-11.
  Payment in full before transacting business, §81-3-9.

CAPITAL STOCK SAVINGS ASSOCIATIONS.
Acquisition of controlling interest, §81-12-67.
Annual meeting of stockholders, §81-12-73.
Conversion into federal association, §81-12-61.
Conversion of association into capital stock association, §§81-12-57, 81-12-59.
Conversion of federal association into state-chartered association, §81-12-55.
Directors, §81-12-83.
Notice of meetings, §81-12-73.
Organization generally, §§81-12-37, 81-12-39.
Powers, §81-12-51.
Proxy, voting by, §81-12-73.
Savings associations generally, §§81-12-1 to 81-12-229.
Voting by stockholders, §81-12-73.

CASUALTY INSURANCE.
Real estate loans invested in by savings association.
  Borrower's choice, §81-12-163.

CEASE AND DESIST ORDERS.
Banking and consumer finance, department of.
  Appeal of cease and desist order, §81-1-129.
  Bank holding companies, §81-5-28.
  Bank violations, §81-1-121.
  Branch banks, §81-7-19.
  Investigation of proposed federal cease and desist, §81-1-103.
  Penalty for noncompliance, §81-1-123.
  Supervisory control of banks, §81-1-125.
  Temporary cease and desist order, §81-1-119.
Mortgage brokers, lenders, loan originators.
  Violations of law, §81-18-39.

CEASE AND DESIST ORDERS —Cont'd
Savings associations.
  Appeal of cease and desist order, §81-12-219.
  Issuance supervisory control for association, §81-12-217.
  Unsafe or unfair practices, §81-12-211.
    Civil penalty for violation, §§81-12-213, 81-12-215.
Savings banks.
  Civil penalty for violation, §81-14-203.
  Judicial review, §81-14-213.
  Unsafe or unsound practice, or unfair and discriminatory practice, §81-14-201.
Trust companies.
  Penalty for violation, §81-27-7.101.

CERTIFICATES OF DEPOSIT.
Accounts payable on death, §§81-5-62, 81-5-63.
Fiduciary account, §81-5-34.

CERTIFICATES OF INCORPORATION.
Bank incorporation, §81-3-13.
Credit unions, §81-13-1.
Savings associations.
  Generally, §§81-12-25 to 81-12-33.
Savings banks, §81-14-59.
  Amendment, §81-14-79.

CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY.
Branch banks, §81-7-1.

CERTIFIED CHECKS.
Amount to stand to credit of drawer on books of bank.
  Requirement for officer, clerk or employee to certify, §81-5-71.

CHANCERY COURTS.
Savings associations.
  Appointment of conservator, §81-12-181.

CHARITABLE ORGANIZATIONS.
Mortgage loan licensing and regulation.
  S.A.F.E. mortgage act exemptions, §81-18-5.

CHECKS.
Certified checks.
  Amount required to stand to credit of drawer on books of bank, §81-5-71.

CHECKS —Cont'd
Minor's deposit in bank in his or her name.
  Payment of money on check or order of person, §81-5-59.
Month and year checking account opened.
  Printing on face of check, §81-5-56.
Payment of checks drawn on bank, §81-5-1.
Person under disability making deposit in bank in his or her name.
  Payment of money on check or order of person, §81-5-59.
Processing fee for returned checks.
  Savings banks collecting, §81-14-365.
Savings banks.
  Processing fee for returned checks, §81-14-365.

CHILDREN AND MINORS.
Bank deposits in minor's name.
  Payment of money on check or order, §81-5-59.
Bank leasing safe deposit box to minor, §81-5-61.
Credit unions.
  Shares issued and deposits received in name of minor, §81-13-37.
Deposit in bank in minor's name.
  Payment by bank of money on check or order, §81-5-59.
Leasing safe deposit box from bank, §81-5-61.
Safe deposit boxes.
  Leasing from bank, §81-5-61.
Savings accounts at savings institutions, §81-12-135.
Savings banks.
  Issuance of savings accounts to minors, §81-14-369.

CHOICE OF LAW.
Trust institutions.
  Law governing fiduciary investment, §81-27-3.103.
  Law governing trust, §81-27-3.102.

CHURCHES AND OTHER PLACES OF WORSHIP.
Trust companies.
  Activities not requiring charter, license, registration as.
    Religious denomination, church acting as trustee, §81-27-1.102.

CLEARINGHOUSES.
Banks or banking institutions establishing, §81-5-93.
  Powers, §81-5-95.

CLOSING INSOLVENT BANKS, §§81-9-1 to 81-9-75.

COLLATERAL.
Bank stock accepted as collateral by bank, §81-5-17.

COLLECTION AGENCIES.
Debt management services.
  Prohibited acts, §81-22-19.

COMMISSIONER OF BANKING AND CONSUMER FINANCE.
Generally, §§81-1-57 to 81-1-137.

CONFIDENTIALITY OF INFORMATION.
Bank depositors information, §81-5-55.
Mortgage brokers, lenders, loan originators.
  Examinations and investigations by department, §81-18-21.
  Nationwide mortgage licensing system and registry, §81-18-63.
Savings associations.
  Books and records pertaining to members, savings account holders and borrowers, §81-12-77.
  Information obtained by commissioner, examiners or employees of department of banking and consumer finance, §81-12-17.
Savings banks, §81-14-167.

CONFLICT OF LAWS.
Trust companies.
  Choice of law governing fiduciary investments, §81-27-3.103.
  Choice of law governing trust, §81-27-3.102.

CONFLICTS OF INTEREST.
Savings association's directors and officers, §81-12-87.
Savings banks.
  Commissioner and employees of department of banking and consumer finance, §81-14-165.
  Conflicting business transactions by officers and directors, §81-14-255.
Trust companies.
  Disclosure of potential conflicts, §81-27-3.302.

CONFLICTS OF INTEREST —Cont'd
Trust companies —Cont'd
  Transacting business with management and affiliates, §81-27-6.207.

CONSERVATORS.
Credit unions.
  Appointment, powers and duties, §81-13-21.
Savings associations.
  Appointment by commissioner, §§81-12-181, 81-12-185.

CONSUMER CREDIT.
Consumer loan brokers, §§81-19-1 to 81-19-35.
Debt management services, §§81-22-1 to 81-22-31.

CONSUMER LOAN BROKERS, §§81-19-1 to 81-19-35.
Acceptance of assignment of wages or salary from borrower prohibited, §81-19-23.
Action against broker by borrower injured by violation, §81-19-23.
Administrative fine for charging or collecting service charge or advance fee, §81-19-17.
Advance fee.
  Administrative fine, §81-19-17.
  Prohibited, §81-19-23.
Advertising.
  Prohibited activities, §81-19-23.
Appeals.
  Denial or revocation of license, §81-19-35.
Application for license, §81-19-9.
Assessment for examination and administrative expenses, §81-19-17.
Bond of license applicant, §81-19-9.
Change of licensed location, §81-19-13.
Consumer finance fund.
  Deposit of funds collected in, §81-19-19.
Consumer loan broker act, §81-19-1.
Contracts, requirements, §81-19-21.
Criminal penalty for unlicensed practice, §81-19-5.
Criminal penalty for violation, §81-19-23.
Definitions, §81-19-3.
Denial of application by commissioner, §81-19-11.

CONSUMER LOAN BROKERS —Cont'd
Enjoining continuing violations, §81-19-29.
Enjoining violation, §81-19-17.
Enumeration of charges and contracts, §81-19-21.
Examination of licensee by commissioner, §81-19-17.
Examination of persons suspected of conducting business requiring license by Commissioner, §81-19-18.
Exclusions from license requirement, §81-19-7.
Failure to comply with chapter.
  Underlying transaction not affected, §81-19-33.
Fee for license, §81-19-9.
Fee for renewal of license, §81-19-15.
Grounds for suspending or revoking license, §81-19-29.
Hearing upon denial or revocation of license, §81-19-35.
Investigation of applicant for license, §81-19-11.
Issuance of license by commissioner, §81-19-11.
License required to engage in business, §81-19-5.
New address for licensed location, §81-19-13.
Notice.
  Hearing on denial or revocation of license, §81-19-35.
One license for each place of business, §81-19-13.
Posting of license, §81-19-13.
Prohibited activities, §81-19-23.
Real property.
  Contract requirements when loan secured by real property, §81-19-21.
Records, §81-19-25.
Regulations promulgated by commissioner, §81-19-17.
Renewal of license, §81-19-15.
Retention of records, §81-19-25.
Separate accounts for charges and fees collected, §81-19-27.
Separate licenses for each location, §81-19-13.
Service charge, administrative fine, §81-19-17.
Service charge not finance charge, §81-19-31.

CONSUMER LOAN BROKERS —Cont'd
Service charges, prohibited, §81-19-23.
Supervision of commissioner over licensee, §81-19-17.
Surrender of license by returning to commissioner, §81-19-13.
Suspension or revocation of license, §81-19-29.
  Hearing, §81-19-35.
Time for commissioner to act on application, §81-19-11.
Unlicensed practice.
  Criminal penalty, §81-19-5.
Validity and enforceability of debt, mortgage, deed of trust or other lien.
  Not affected by failure to comply with chapter, §81-19-33.
Withdrawal of loan charges and fees from separate accounts, §81-19-27.

CONSUMER PROTECTION.
Mortgage brokers, lenders, loan originators.
  Mississippi S.A.F.E. mortgage act, §§81-18-1 to 81-18-63.

CONTINUING EDUCATION.
Mortgage brokers, lenders, loan originators.
  License, §81-18-14.
    Renewal.
      Mortgage loan originators, §81-18-15.

CONTRACTS.
Consumer loan brokers, requirements, §81-19-21.
Debt management services.
  Written agreement required, §81-22-11.
Insurance premium finance agreements.
  Insurance premium finance companies generally, §§81-21-1 to 81-21-27.
Management contracts.
  Savings associations, §81-12-93.
Savings associations.
  Execution of contract by savings account holder, §81-12-119.
  Management contracts, §81-12-93.

CONVERSION INTO STATE CHARTERED BANK, §81-5-85.

CONVERSION OF CREDIT UNIONS, §81-13-65.

CONVERSION OF SAVINGS ASSOCIATIONS, §§81-12-53 to 81-12-63.

CONVERSION OF SAVINGS BANKS.
From state to federal charter, §81-14-103.
Mutual to stock savings bank, §81-14-107.
Simultaneous charter and ownership conversion, §81-14-105.
Stock savings bank to mutual savings bank, §81-14-109.
Supervisory conversions ordered by commissioner, §81-14-127.
To savings banks, §81-14-101.

CONVERSION OF TRUST COMPANIES.
Private trust company to public trust company, §81-27-4.303.

COOPERATIVE ASSOCIATIONS.
Agricultural credit cooperative associations, §§81-15-1 to 81-15-31.
Farmers' credit associations, §§81-17-1 to 81-17-25.

CORPORATIONS.
Agricultural credit corporations, §§81-15-1 to 81-15-31.
Banks and banking.
  Incorporation and organization of banks, §§81-3-1 to 81-3-17.
Credit corporations.
  Agricultural credit corporations, §§81-15-1 to 81-15-31.
Credit unions.
  Generally, §§81-13-1 to 81-13-81.
Savings association, §§81-12-1 to 81-12-229.
Savings banks.
  Generally, §§81-14-1 to 81-14-403.
Trust companies generally, §§81-27-1.001 to 81-27-8.131.

COSTS.
Consumer loan brokers.
  Action by injured borrower against broker, §81-19-23.

COUNTIES.
Mortgage brokers, lenders, loan originators.
  Enactment of ordinance in compliance with S.A.F.E. mortgage act.
    Authorized, §81-18-8.

CREDIT ASSOCIATIONS.
Farmers' credit associations, §§81-17-1 to 81-17-25.

CREDIT CORPORATIONS.
Agricultural credit corporations, §§81-15-1 to 81-15-31.

CREDIT REPORTS.
Mortgage brokers, lenders, loan originators.
  Submission with license application, §81-18-9.

CREDIT UNIONS, §§81-13-1 to 81-13-81.
Amendments to articles of association, §81-13-3.
Annual report on condition, §81-13-15.
Articles of association, §81-13-3.
  Amendments, §81-13-3.
Automatic teller machines.
  Establishment of electronic banking terminals, §81-13-62.
Bankruptcy or insolvency.
  Temporary suspension of operations by commissioner, §81-13-19.
Board of directors, §81-13-25.
  Compensation for services rendered, §81-13-29.
  Expulsion of members, §81-13-55.
  General management powers, §81-13-27.
  Officers, election, §81-13-27.
  Special duties of director, §81-13-27.
  Special meetings of members, ordering, §81-13-69.
Borrowing money, §81-13-41.
Branch offices, establishment, §81-13-60.
Bylaws, §81-13-5.
Capital requirements, §81-13-35.
Certificate of incorporation.
  Petition for, §81-13-1.
Certificate of merger, §81-13-79.
Change of place of business, §81-13-61.
Charges on loans, §81-13-39.
Concealing assets, books or records.
  Appointment of conservator, powers and duties, §81-13-21.
Conflicting laws repealed, §81-13-75.
Conservators, appointment, powers and duties, §81-13-21.
Conversion from state to federal credit union and from federal to state credit union, §81-13-65.

CREDIT UNIONS —Cont'd
Definitions.
  Electronic banking terminals, §81-13-62.
Deliberation or determination or pecuniary interest of director, member or employee.
  Prohibited participation, §81-13-28.
Deposits payable to multiple persons.
  Payment to successors of deceased depositors, §81-13-58.
Dissolution.
  Voluntary dissolution, §81-13-59.
Dividends, §81-13-53.
Election of board of directors at annual meeting of members, §81-13-25.
Electronic banking terminals, §81-13-62.
Embezzlement of funds, securities or other properties.
  Punishment, §81-13-71.
Entrance fee for membership, §81-13-13.
Examination by commissioner of banking and consumer finance, §81-13-17.
Exemption from taxation.
  Capital, reserves, surpluses and other funds, §81-13-63.
Expulsion of members, §81-13-55.
  Refunds, §81-13-57.
False affidavit to statement, report or other document, §81-13-71.
Federal credit unions.
  Authorization to operate as, §81-13-12.
  Conversion from state to federal credit union or from federal to state credit union, §81-13-65.
Fees.
  Examination by commissioner, §81-13-17.
  Filing application, §81-1-115.
Fines.
  Failure or delay in transmitting oath of directors, §81-13-25.
  Failure to make annual report on condition, §81-13-15.
First use of funds of credit union, §81-13-11.
Fiscal year, §81-13-23.
Foreign credit unions, §81-13-81.
Group organization, §81-13-13.
Impairment of capital.
  Appointment of conservator, powers and duties, §81-13-21.

CREDIT UNIONS —Cont'd
Income exempt from taxation, §81-13-63.
Insurance of accounts, §81-13-4.
Interest on loans to members, §81-13-39.
Limitation on borrowing money, §81-13-41.
Loans by credit unions, limitations, §81-13-41.
Loans to members, §81-13-39.
  Repayment, §81-13-45.
  Rules and regulations to be followed, §81-13-43.
Loss of field of membership.
  Appointment of conservator, powers and duties, §81-13-21.
Membership, §81-13-13.
Merger, §81-13-79.
Minors, issuing shares and receiving deposits in name of, §81-13-37.
Mismanagement, misappropriation of funds, fraud or other violation.
  Appointment of conservator, powers and duties, §81-13-21.
  Temporary suspension of operations by commissioner, §81-13-19.
Mississippi credit union league.
  Acceptance of members, §81-13-13.
Names.
  Restriction on use of term credit union, §81-13-9.
National credit union administration.
  Insurance of accounts by, §81-13-5.
Net income set apart as reserve fund, §81-13-51.
Notice of temporary suspension of operations, §81-13-19.
Notice to commissioner of desire to engage in business, §81-13-1.
Oath of directors, §81-13-25.
Payment to successors of deceased depositors.
  Deposits payable to multiple persons, §81-13-58.
Pecuniary interest of director, member or employee.
  Participation in deliberation or determination prohibited, §81-13-28.
Perjury.
  False affidavit to statement, report or other document, §81-13-71.

CREDIT UNIONS —Cont'd
Persons who may organize, §81-13-1.
Petition for certificate of incorporation, §81-13-1.
Place of business, change, §81-13-61.
Powers, §81-13-11.
President or chairman.
  Election by board, §81-13-27.
Proxies.
  Members voting by, §81-13-69.
Qualification of persons who may organize, §81-13-1.
Recording secretary, §81-13-27.
Records, §81-13-73.
Refunds to expelled or withdrawing members, §81-13-57.
Repayment of loans by members, §81-13-45.
Repeal of conflicting laws, §81-13-75.
Report of condition annually, §81-13-15.
Required capital, §81-13-35.
Reserve fund, §81-13-51.
Restriction on use of term credit union, §81-13-9.
Rules and regulations promulgated by commissioner of banking and consumer finance, §81-13-15.
Secretary.
  Election by board, §81-13-27.
Special meetings of members, §81-13-69.
Supervision by department of banking and consumer finance, §81-13-15.
Supervisory committees.
  Audit of receipts, disbursements, etc., §81-13-33.
  Members not to receive compensation for services, §81-13-29.
  Special meetings of members, ordering, §81-13-69.
  Suspension of directors, committee members or officers, §81-13-33.
  Vacancies, filling, §81-13-33.
Suspension of directors, committee members or officers.
  Supervisory committee suspending, §81-13-33.
Suspension of operations by commissioner.
  Temporary suspension, §81-13-19.
Taxation of real and personal property, §81-13-63.
Tax exemption.
  Capital, reserves, surpluses and other funds, §81-13-63.

CREDIT UNIONS —Cont'd
Temporarily suspending operations, §81-13-19.
Trusts, issuing shares and receiving deposits in name of, §81-13-37.
Vice-president or vice-chairman.
  Election by board, §81-13-27.
Voluntary dissolution, §81-13-59.
Voting by members, §81-13-69.
Withdrawing members.
  Refunds, §81-13-57.

CRIMES.
Bank call reports.
  Commissioner of banking and consumer finance.
    Failing or refusing to issue copy, §81-1-99.
Bank depositor information, disclosure, §81-5-55.
Bank directors, officers or employees.
  False reports or false statements, §81-1-101.
  Interlocking directorates, §81-5-49.
  Knowingly or willfully neglecting to perform duties, §81-5-103.
Bank examinations.
  False statements by bank officers, agents, etc., under oath, §81-1-85.
Certification of check.
  Amount not actually standing to credit of drawer on books of bank, §81-5-71.
Consumer loan brokers, §81-19-23.
  Unlicensed practice, §81-19-5.
Credit unions.
  Improper use of words credit union, §81-13-9.
Department of banking and consumer finance officers and employees.
  Borrowing money from or endorsing notes to state banks, §81-1-77.
Examination of banks.
  False statements by bank officers, agents, etc., under oath, §81-1-85.
Interlocking directorates.
  Bank directors, §81-5-49.
Mortgage brokers, lenders, loan originators, §81-18-43.
Savings associations.
  Criminal penalty for violations generally, §81-12-207.

CRIMES —Cont'd
Savings banks.
  Defaming, false information and advertising as to business, §81-14-173.
  Failure of commissioner to provide copy of call reports, §81-14-179.
  Refusal to exhibit books, accounts or papers to commissioner, §81-14-155.
Trust companies.
  Acquisition of control of state trust company.
    Failure or refusal to file application, §81-27-6.106.
  Books or records, §81-27-6.206.

CRIMINAL HISTORY RECORD CHECKS.
Banking examiners.
  Requirements of employment, §81-1-65.
Banks and financial institutions.
  Background checks of consumer industry licensees.
    Multistate licensing system, §81-1-135.
Mortgage brokers, lenders, loan originators.
  License applicants, §81-18-9.
  Mortgage loan originators.
    Licensed or registered through nationwide licensing system and registry, §81-18-61.

D

DAMAGES.
Consumer loan brokers.
  Action by borrower when injured by broker, §81-19-23.

DEBENTURES.
Trust company issuing, §81-27-4.204.

DEBT MANAGEMENT SERVICES, §§81-22-1 to 81-22-31.
Advertising, §81-22-21.
Application for licensure, §81-22-5.
Bonds, surety, §81-22-7.
  Third party payment processors, §81-22-28.
Citation of chapter, §81-22-1.
Commingling of funds, §81-22-9.
Commissioner.
  Defined, §81-22-3.

DEBT MANAGEMENT SERVICES —Cont'd
Commissioner —Cont'd
  Enforcement, §81-22-23.
    Staff, §81-22-27.
  Powers and duties, §81-22-17.
  Staff, §81-22-27.
Complaints.
  Investigation of complaints.
    Commissioner's powers and duties, §81-22-17.
Contracts.
  Written agreement required, §81-22-11.
Defined terms, §81-22-3.
Enforcement, §81-22-23.
  Commissioner's staff, §81-22-27.
Escrow account.
  Deposit of consumer funds, §81-22-9.
Fair share contributions.
  Defined, §81-22-3.
  Verification of payments to creditors, §81-22-15.
Fees, §81-22-13.
Handling consumer funds.
  Requirements, §81-22-9.
Investigation of complaints.
  Commissioner's powers and duties, §81-22-17.
Licenses, §81-22-5.
  Bonds, surety, §81-22-7.
  Commissioner's powers and duties, §81-22-17.
  Enforcement, §81-22-23.
  Suspension or revocation, §81-22-25.
Loans.
  Prohibited acts, §81-22-19.
Mortgage interest, obtaining.
  Prohibited acts, §81-22-19.
Notice.
  Third party payment processors, intent by licensee to use, §81-22-28.
  Written agreement.
    Notice to consumer, §81-22-11.
Prohibited acts, §81-22-19.
  False advertising, §81-22-21.
  Suspension or revocation of licenses, §81-22-25.
  Unfair and deceptive trade practices, §81-22-23.
Purchase of debts.
  Prohibited acts, §81-22-19.
Records.
  Defined, §81-22-3.

DEBT MANAGEMENT SERVICES —Cont'd
Records —Cont'd
  Maintenance, §81-22-15.
Renewal of licenses, §81-22-5.
Repeal of provisions, §81-22-31.
Reports.
  Written reports to consumers, §81-22-15.
Rules and regulations.
  Commissioner's powers and duties, §81-22-17.
Short title, §81-22-1.
Third party payment processors.
  Notice of intent by licensee to use, §81-22-28.
Unfair and deceptive trade practices, §81-22-23.
Written agreement required, §81-22-11.

DEBTORS AND CREDITORS.
Debt management services, §§81-22-1 to 81-22-31.

DECEDENTS' ESTATES.
Bank acting in fiduciary capacity as executor or administrator.
  Acceptance of account by administrators, executors and other fiduciaries, §81-5-34.
  Bond or other security for faithful performance, §81-5-35.
  Not obligated to inquire as to lack of or limitation upon power of person, §81-5-53.
  Out-of-state banking and trust associations and corporations, §81-5-43.
  Registering securities held in name of bank's nominee, §81-5-39.
Savings accounts at savings institutions.
  Accepting accounts in name of administrator or executor, §81-12-139.
    Powers of fiduciary, §81-14-361.
  Payment of accounts of deceased nonresidents, §§81-12-141, 81-14-381.
  Payment of account to executor or administrator.
    Deceased nonresident, §81-12-141.
  Payment to successors without administration, §81-12-143.

DEFAMATION.
Savings banks, §81-14-173.

DEFINED TERMS.

Account.
  Multistate trust institutions act, §81-27-1.002.
Act as a fiduciary.
  Multistate trust institutions act, §81-27-1.002.
Administer.
  Multistate trust institutions act, §81-27-1.002.
Advance fee.
  Consumer loan broker act, §81-19-3.
Affiliate.
  Multistate trust institutions act, §81-27-1.002.
  Savings bank law, §81-14-7.
Agency.
  International banking act, §81-25-3.
Agricultural products.
  Farmers' credit associations, §81-17-5.
Application.
  S.A.F.E. mortgage act, §81-18-3.
Appropriate regulatory officials.
  Operation of multi-bank holding company, §81-7-19.
Associate.
  Savings bank law, §81-14-7.
Association.
  Farmers' credit associations, §81-17-5.
  Savings association law, §81-12-3.
  Savings bank law, §81-14-7.
Bank, §81-3-1.
  Bank holding companies, §81-5-28.
  Depository financial institutions self-evaluation reports, §81-5-151.
  International banking act, §81-25-3.
  Interstate bank branching act, §81-23-5.
  Multistate trust institutions act, §81-27-1.002.
  Operation of multi-bank holding company, §81-7-19.
Bank holding company, §81-5-28.
  International banking act, §81-25-3.
  Interstate bank branching act, §81-23-5.
  Operation of multi-bank holding company, §81-7-19.
Bank holding company act.
  International banking act, §81-25-3.
Banking law.
  Depository financial institutions self-evaluation reports, §81-5-151.
Bank regulators.
  Depository financial institutions self-evaluation reports, §81-5-151.

DEFINED TERMS —Cont'd

Bank supervisory agency.
  International banking act, §81-25-3.
  Interstate bank branching act, §81-23-5.
  Multistate trust institutions act, §81-27-1.002.
Borrower.
  S.A.F.E. mortgage act, §81-18-3.
Branch.
  International banking act, §81-25-3.
  Multistate trust institutions act, §81-27-1.002.
  S.A.F.E. mortgage act, §81-18-3.
Branch office.
  Savings bank law, §81-14-7.
Business organization.
  Acquisition of controlling interest in savings associations, §81-12-67.
Capital.
  Trust companies, §81-27-6.001.
Capital stock.
  Savings bank law, §81-14-7.
Capital stock association.
  Savings association law, §81-12-3.
Certificate of incorporation of charter.
  Savings bank law, §81-14-7.
Charter.
  Multistate trust institutions act, §81-27-1.002.
Clerical or support duties.
  S.A.F.E. mortgage act, §81-18-3.
Client.
  Multistate trust institutions act, §81-27-1.002.
Commissioner.
  Consumer loan broker act, §81-19-3.
  Debt management services, §81-22-3.
  Multistate trust institutions act, §81-27-1.002.
Commitment.
  S.A.F.E. mortgage act, §81-18-3.
Community.
  Savings association law, §81-12-3.
Company.
  Bank holding companies, §81-5-28.
  Multistate trust institutions act, §81-27-1.002.
  S.A.F.E. mortgage act, §81-18-3.
Conflicts of interest.
  Savings bank law, §81-14-7.
Conservator.
  Trust companies, §81-27-6.001.
Consumer loan.
  Consumer loan broker act, §81-19-3.

DEFINED TERMS —Cont'd

Consumer loan broker, §81-19-3.

Control.
- Bank holding companies, §81-5-28.
- Interstate bank branching act, §81-23-5.
- Operation of multi-bank holding company, §81-7-19.
- S.A.F.E. mortgage act, §81-18-3.
- Savings bank law, §81-14-7.
- Trust companies, §81-27-6.001.

Corporation.
- Banks and financial institutions, §81-3-1.

Debt management service provider, §81-22-3.

Debt management services, §81-22-3.

Depository institution.
- Multistate trust institutions act, §81-27-1.002.
- S.A.F.E. mortgage act, §81-18-3.
- Savings bank law, §81-14-7.

Direct office.
- International banking act, §81-25-3.

Disinterested director.
- Savings bank law, §81-14-7.

Documents.
- Consumer loan broker act, §81-19-3.
- Debt management services, §81-22-3.
- Insurance premium finance companies, §81-21-1.
- S.A.F.E. mortgage act, §81-18-3.

Earnings.
- Savings association law, §81-12-3.

Electronic fund transfer.
- Credit unions, §81-13-62.
- Electronic banking terminal, §81-5-100.

Electronic terminal.
- Credit unions, §81-13-62.
- Electronic banking terminal, §81-5-100.

Equity capital trust companies, §81-27-6.001.

Equity security.
- Trust companies, §81-27-6.001.

Examination and investigation.
- Savings bank law, §81-14-7.

Executive officer.
- S.A.F.E. mortgage act, §81-18-3.

Fair share contribution.
- Debt management services, §81-22-3.

Family or household member.
- Private trust companies, §81-27-4.301.

Federal agency.
- International banking act, §81-25-3.

DEFINED TERMS —Cont'd

Federal bank.
- International banking act, §81-25-3.

Federal banking agencies.
- S.A.F.E. mortgage act, §81-18-3.

Federal deposit insurance act.
- International banking act, §81-25-3.

Federal international banking act.
- International banking act, §81-25-3.

Fiduciary record.
- Multistate trust institutions act, §81-27-1.002.

Financial institution.
- Savings association law, §81-12-3.

Foreign bank.
- International banking act, §81-25-3.
- Multistate trust institutions act, §81-27-1.002.

Foreign person.
- International banking act, §81-25-3.

Gross negligence.
- Bank director or officer liability, §81-5-105.

Hazardous condition.
- Trust companies, §81-27-6.001.

Home state.
- International banking act, §81-25-3.
- Multistate trust institutions act, §81-27-1.002.

Home state regulator.
- Interstate bank branching act, §81-23-5.
- Multistate trust institutions act, §81-27-1.002.

Host state.
- Interstate bank branching act, §81-23-5.
- Multistate trust institutions act, §81-27-1.002.

Housing finance agency.
- S.A.F.E. mortgage act, §81-18-3.

Immediate family.
- Savings bank law, §81-14-7.

Immediate family member.
- S.A.F.E. mortgage act, §81-18-3.

Impaired condition.
- Savings association law, §81-12-3.

Individual.
- S.A.F.E. mortgage act, §81-18-3.

Insider.
- Trust companies, §81-27-6.001.

Insolvent.
- Trust companies, §81-27-6.001.

Insurance of deposit accounts.
- Savings bank law, §81-14-7.

DEFINED TERMS —Cont'd
Insured association.
Savings association law, §81-12-3.
Insured depository institution.
International banking act, §81-25-3.
Interim bank merger.
Operation of multi-bank holding company, §81-7-19.
Interstate banking and branching efficiency act.
International banking act, §81-25-3.
Interstate branch.
International banking act, §81-25-3.
Interstate bank branching act, §81-23-5.
Interstate branching transaction, §81-23-5.
Investment security.
Trust companies, §81-27-6.001.
Lender.
Consumer loan broker act, §81-19-3.
Use of lender's trademark or trade name, §81-29-1.
License.
Consumer loan broker act, §81-19-3.
Multistate trust institutions act, §81-27-1.002.
S.A.F.E. mortgage act, §81-18-3.
Licensee.
Debt management services, §81-22-3.
S.A.F.E. mortgage act, §81-18-3.
Limited liability trust company, §81-27-6.001.
Liquid assets.
Savings association law, §81-12-3.
Loan charges and fees.
Consumer loan broker act, §81-19-3.
Loan processor or underwriter.
S.A.F.E. mortgage act, §81-18-3.
Loan production office.
Savings bank law, §81-14-7.
Loans and extensions of credit.
Trust companies, §81-27-6.001.
Lock-in agreement.
S.A.F.E. mortgage act, §81-18-3.
Lock-in fee.
S.A.F.E. mortgage act, §81-18-3.
Make a mortgage loan.
S.A.F.E. mortgage act, §81-18-3.
Manager.
Trust companies, §81-27-6.001.
Member.
Farmers' credit associations, §81-17-5.
Savings association law, §81-12-3.
Savings bank law, §81-14-7.

DEFINED TERMS —Cont'd
Misrepresent.
S.A.F.E. mortgage act, §81-18-3.
Mississippi bank.
International banking act, §81-25-3.
Interstate bank branching act, §81-23-5.
Mississippi national bank.
International banking act, §81-25-3.
Mississippi state agency.
International banking act, §81-25-3.
Mississippi state bank.
International banking act, §81-25-3.
Interstate bank branching act, §81-23-5.
Mississippi state branch.
International banking act, §81-25-3.
Mortgage broker.
S.A.F.E. mortgage act, §81-18-3.
Mortgage lender.
S.A.F.E. mortgage act, §81-18-3.
Mortgage lending process.
S.A.F.E. mortgage act, §81-18-3.
Mortgage loan originator.
S.A.F.E. mortgage act, §81-18-3.
Mutual association.
Savings association law, §81-12-3.
Mutual savings bank, §81-14-7.
Nationwide mortgage licensing system and registry.
S.A.F.E. mortgage act, §81-18-3.
Natural person.
S.A.F.E. mortgage act, §81-18-3.
Net income.
Savings association law, §81-12-3.
Net worth.
Savings association law, §81-12-3.
Savings bank law, §81-14-7.
New trust office.
Multistate trust institutions act, §81-27-1.002.
Nontraditional mortgage product.
S.A.F.E. mortgage act, §81-18-3.
Offering or negotiating a residential mortgage loan.
S.A.F.E. mortgage act, §81-18-3.
Office.
Multistate trust institutions act, §81-27-1.002.
Officers.
Trust companies, §81-27-6.001.
One borrower.
Savings association law, §81-12-3.
Operating subsidiary.
Trust companies, §81-27-6.001.

DEFINED TERMS —Cont'd

Original incorporators.
  Savings bank law, §81-14-7.

Out-of-state bank.
  International banking act, §81-25-3.
  Interstate bank branching act, §81-23-5.
  Multistate trust institutions act, §81-27-1.002.

Out-of-state bank holding company.
  International banking act, §81-25-3.

Out-of-state foreign bank.
  International banking act, §81-25-3.

Out-of-state state bank.
  Interstate bank branching act, §81-23-5.

Out-of-state trust company.
  Multistate trust institutions act, §81-27-1.002.

Out-of-state trust institution.
  Multistate trust institutions act, §81-27-1.002.

Participant.
  Trust companies, §81-27-6.001.

Participation shares.
  Trust companies, §81-27-6.001.

Person.
  Acquisition of controlling interest in savings associations, §81-12-67.
  Debt management services, §81-22-3.
  Farmers' credit associations, §81-17-5.
  Insurance premium finance companies, §81-21-1.
  Mortgage brokers, lenders, loan originators, §81-18-39.
  Multistate trust institutions act, §81-27-1.002.
  Operation of multi-bank holding company, §81-7-19.
  S.A.F.E. mortgage act, §81-18-3.
  Savings association law, §81-12-3.

Plan of conversion.
  Savings bank law, §81-14-7.

Premium finance agreement, §81-21-1.

Premium finance company, §81-21-1.

Primary lending area.
  Savings association law, §81-12-3.

Principal.
  S.A.F.E. mortgage act, §81-18-3.

Principal office.
  Multistate trust institutions act, §81-27-1.002.
  Savings bank law, §81-14-7.

Principal shareholder.
  Trust companies, §81-27-6.001.

DEFINED TERMS —Cont'd

Private trust company, §81-27-6.001.

Proposed savings bank, §81-14-7.

Qualifying individual.
  S.A.F.E. mortgage act, §81-18-3.

Real estate brokerage activity.
  S.A.F.E. mortgage act, §81-18-3.

Real estate law.
  Savings association law, §81-12-3.

Records.
  Consumer loan broker act, §81-19-3.
  Debt management services, §81-22-3.
  Insurance premium finance companies, §81-21-1.
  S.A.F.E. mortgage act, §81-18-3.

Registered agent.
  Savings bank law, §81-14-7.

Registered mortgage loan originator.
  S.A.F.E. mortgage act, §81-18-3.

Registration.
  Multistate trust institutions act, §81-27-1.002.

Representative office.
  International banking act, §81-25-3.

Representative trust office.
  Multistate trust institutions act, §81-27-1.002.

Residential mortgage loan.
  S.A.F.E. mortgage act, §81-18-3.

Residential real estate.
  S.A.F.E. mortgage act, §81-18-3.

Resulting bank.
  Interstate bank branching act, §81-23-5.

Savings account.
  Savings association law, §81-12-3.

Savings and loan holding company.
  Acquisition of controlling interest in savings associations, §81-12-67.

Savings association.
  Multistate trust institutions act, §81-27-1.002.

Savings bank, §81-14-7.

Savings institution.
  Savings association law, §81-12-3.
  Savings bank law, §81-14-7.

Savings liability.
  Savings association law, §81-12-3.

Self-assessment.
  Depository financial institutions self-evaluation reports, §81-5-151.

Self-assessment report.
  Depository financial institutions self-evaluation reports, §81-5-151.

DEFINED TERMS —Cont'd
Service a mortgage loan.
  S.A.F.E. mortgage act, §81-18-3.
Service charge.
  Consumer loan broker act, §81-19-3.
Service corporation.
  Savings bank law, §81-14-7.
Service organization.
  Savings association law, §81-12-3.
Shareholder.
  Trust companies, §81-27-6.001.
Shares.
  Trust companies, §81-27-6.001.
Sources available for payment of earnings.
  Savings association law, §81-12-3.
State.
  International banking act, §81-25-3.
  Interstate bank branching act, §81-23-5.
  Multistate trust institutions act, §81-27-1.002.
State bank.
  Multistate trust institutions act, §81-27-1.002.
State savings bank, §81-14-7.
State trust company.
  Multistate trust institutions act, §81-27-1.002.
State trust company facility.
  Investment in facilities by state trust company, §81-27-5.001.
State trust institution.
  Multistate trust institutions act, §81-27-1.002.
Stock savings bank, §81-14-7.
Subsidiary.
  Acquisition of controlling interest in savings associations, §81-12-67.
  Trust companies, §81-27-6.001.
Successor.
  Banks and financial institutions.
    Joint accounts with right of survivorship, §81-5-63.
Surplus.
  Trust companies, §81-27-6.001.
Taking an application for a residential mortgage loan.
  S.A.F.E. mortgage act, §81-18-3.
Third party payment processor.
  Debt management services, §81-22-3.
Thrift institution.
  Savings association law, §81-12-3.
  Savings bank law, §81-14-7.
Transact business with general public.
  Private trust companies, §81-27-4.301.

DEFINED TERMS —Cont'd
Trust business.
  Multistate trust institutions act, §81-27-1.002.
Trust company.
  Multistate trust institutions act, §81-27-1.002.
Trust deposits, §81-27-6.001.
Trust institution.
  Multistate trust institutions act, §81-27-1.002.
Trust office.
  Multistate trust institutions act, §81-27-1.002.
Unauthorized trust activity.
  Multistate trust institutions act, §81-27-1.002.
Undivided profits.
  Trust companies, §81-27-6.001.
Unique identifier.
  S.A.F.E. mortgage act, §81-18-3.
United States.
  International banking act, §81-25-3.
Voluntary dissolution.
  Savings bank law, §81-14-7.
Voting security.
  Trust companies, §81-27-6.001.
Withdrawal value.
  Savings association law, §81-12-3.

DEPARTMENT OF SAVINGS INSTITUTIONS.
Abolished, transfer of functions, §81-12-6.

DESTRUCTION OF RECORDS.
Trust companies.
  Limited liability trust companies, §§81-27-8.121, 81-27-8.122.

DISCIPLINARY ACTIONS.
Consumer loan brokers.
  Suspension or revocation of license, §§81-19-29, 81-19-35.
Insurance premium finance companies.
  Revocation or suspension of license, §§81-21-7, 81-21-9.
International banking.
  Certificate of authority.
    Suspension or revocation by commissioner, §81-25-115.
License to establish and maintain representative office in state.
  Revocation, §81-25-127.

DISCRIMINATION.
Banks and financial institutions.
  Unfair and discriminatory practices.
    Notice of charges, cease and desist orders, §81-1-119.
Savings associations.
  Notice of charges of unfair and discriminatory practice, §81-12-211.

DISSENTERS' RIGHTS.
Trust company mergers, §81-27-6.404.

DISSOLUTION.
Banks, §81-5-101.
Credit unions.
  Voluntary dissolution, §81-13-59.
Savings associations, §81-12-69.
Savings banks.
  Involuntary dissolution, §81-14-211.
  Voluntary dissolution, §§81-14-121, 81-14-123.
Trust companies.
  Involuntary dissolution and liquidation, §§81-27-8.101 to 81-27-8.131.
  Voluntary dissolution and liquidation, §§81-27-8.001 to 81-27-8.006.

DIVIDENDS.
Banking corporations, §81-5-75.
Capital stock savings associations.
  Declaring dividend upon common stock, §81-12-51.
Credit unions, §81-13-53.
Savings banks.
  Stock dividends, §81-14-125.
Trust companies.
  Involuntary dissolution and liquidation.
    Declaration of dividends to shareholders and participants, §81-27-8.113.
    Unclaimed dividends held in trust, §81-27-8.116.

DRIVE-IN TELLER WINDOWS.
Considered branch bank, §81-5-98.
Fee for filing application, §81-1-115.

DUTY OF CARE.
Bank directors and officers, §81-5-105.

DUTY OF GOOD FAITH.
Bank directors and officers, §81-5-105.

E

EDUCATION.
Mortgage brokers, lenders, loan originators.
  Pre license education requirements, §81-18-14.

ELECTRONIC BANKING TERMINALS.
Establishment, §§81-5-100, 81-13-62.

EMBEZZLEMENT.
Credit unions, §81-13-71.

ESCROW.
Debt management services.
  Handling of consumer funds, §81-22-9.
Mortgage brokers, lenders, loan originators.
  Funds paid to licensees for payment of insurance taxes, §81-18-36.

EVIDENCE.
Banking and consumer finance department documents.
  Sealed documents and copies of originals, §81-1-73.
Bank self-assessment reports.
  Privileged information, §81-5-153.
Department of banking and consumer finance documents.
  Sealed documents and certified copies, §81-1-73.
Depository institution self-assessment reports.
  Privileged information, §81-5-153.

EXAMINATIONS.
Banks, §§81-1-81 to 81-1-95.

F

FALSE ADVERTISING.
Savings bank business, §81-14-173.

FARMERS' CREDIT ASSOCIATIONS, §§81-17-1 to 81-17-25.
Application for charter to organize, §81-17-19.
Articles of association, §81-17-15.
  Amendments, §81-17-17.
Assessment on loan to member, §81-17-13.
Borrower, applicant for membership to become, §81-17-13.
Bylaws, §81-17-21.
Charter to organize, application, §81-17-19.

FARMERS' CREDIT ASSOCIATIONS —Cont'd
Definitions, §81-17-5.
Exemptions from taxation, §81-17-25.
Farmers' credit association law, §81-17-1.
Investing and reinvesting surplus and sinking funds, §81-17-23.
Membership, §81-17-13.
Number of persons to organize, §81-17-17.
Powers, §81-17-11.
Public policy, §81-17-3.
Purposes, §81-17-9.
Purposes of association, §81-17-19.
Qualifications of persons to organize, §81-17-17.
Sinking funds, investing and reinvesting, §81-17-23.
Surplus, investing and reinvesting, §81-17-23.
Tax exemptions, §81-17-25.
Who may organize, §81-17-7.

FARMS AND FARMING.
Agricultural credit corporations, §§81-15-1 to 81-15-31.
Farmers' credit associations.
  General provisions, §§81-17-1 to 81-17-25.
Farm loans.
  Local and regional banks authorized to make, §81-5-9.

FDIC.
Banks to become members, §81-5-9.
Savings associations.
  Insurance of savings accounts and share accounts with, §81-12-47.

FEDERAL CAPITAL STOCK SAVINGS ASSOCIATIONS.
Conversion into state-chartered savings association, §81-12-55.
Conversion of state-chartered capital stock association into federal association, §81-12-61.

FEDERAL CREDIT UNIONS.
Authorization to operate as, §81-13-12.
Conversion from state to federal credit union or from federal to state credit union, §81-13-65.
Credit unions generally, §§81-13-1 to 81-13-81.

FEDERAL HOME LOAN BANKS.
Savings associations.
  Authority to qualify and become member of, §81-12-49.
Trust companies.
  Investment in securities issued by, §81-27-5.101.

FEDERAL INTERMEDIATE CREDIT BANK.
Agricultural credit corporations, §§81-15-1 to 81-15-31.

FEDERAL MUTUAL SAVINGS ASSOCIATIONS.
Conversion into state-chartered savings association, §81-12-55.
Conversion of capital stock association into, §81-12-61.
Conversion of state mutual savings association into, §81-12-53.

FEDERAL RESERVE SYSTEM.
Bank or trust company to comply with reserve requirements, §81-5-13.
Savings banks.
  Authority to join, §81-14-389.
State banks may become members, §81-5-11.

FEES.
Consumer loan broker's license, §81-19-9.
Credit unions.
  Examination by commissioner of banking and consumer finance, §81-13-17.
Debt management services, §81-22-13.
  Licenses, §81-22-5.
Department of banking and consumer finance.
  Filing documents and issuing certificate, §81-1-115.
Mortgage brokers, lenders, loan originators.
  Branch offices.
    Application to open, §81-18-17.
    License renewal, §81-18-17.
  Examination of books and records, §81-18-21.
  License, §81-18-15.
  Lock-in fee agreements, §81-18-28.

FIDUCIARIES.
Bank acting in fiduciary capacity.
  Bond or other security for faithful performance, §81-5-35.

FIDUCIARIES —Cont'd
Bank acting in fiduciary capacity —Cont'd
- Out-of-state banking and trust company acting as, §81-5-43.
- Registering securities held in name of bank's nominee, §81-5-39.
- Uniform common trust fund law, §81-5-37.

Bank directors and officers.
- Stand in fiduciary relationship bank, §81-5-105.

Banks accepting accounts of fiduciaries, §81-5-34.
Banks dealing with.
- Not obligated to inquire as to lack of or limitation upon power, §81-5-53.

Savings accounts at savings institutions.
- Association accepting account in name of fiduciary, §81-12-139.
- Opening and holding account in fiduciary capacity, §81-12-117.

Savings association's directors and officers, §81-12-87.
Savings banks.
- Acceptance of accounts in name of fiduciary, powers of fiduciary, §81-14-361.

Trust business conducted by depository institution, bank or trust company.
- Generally, §§81-27-1.001 to 81-27-8.131.

FINANCE COMPANIES.
Insurance premium finance companies, §§81-21-1 to 81-21-27.
Trademarks, trade names, specific loan information.
- Use by person other than lender, §§81-29-1, 81-29-3.

FINANCIAL INSTITUTIONS.
Agricultural credit corporations, §§81-15-1 to 81-15-31.
Bank holding companies.
- Out-of-state bank holding companies.
  - Establishing bank in state, §§81-8-1 to 81-8-11.

Branch banks.
- Generally, §§81-7-1 to 81-7-23.
- Interstate bank branching, §§81-23-1 to 81-23-25.

Consumer loan brokers, §§81-19-1 to 81-19-35.

FINANCIAL INSTITUTIONS —Cont'd
Credit unions, §§81-13-1 to 81-13-81.
Department of banking and consumer finance.
- Generally, §§81-1-57 to 81-1-137.

Examination of banks, §§81-1-81 to 81-1-95.
Farmers' credit associations, §§81-17-1 to 81-17-25.
General provisions relating to banks and banking, §§81-5-1 to 81-5-105.
Incorporation and organization of banks.
- Generally, §§81-3-1 to 81-3-17.

Insolvent banks, §§81-9-1 to 81-9-75.
Insurance premium finance companies, §§81-21-1 to 81-21-27.
International banking, §§81-25-1 to 81-25-203.
Interstate bank branching, §§81-23-1 to 81-23-25.
Regional banking institutions, §§81-8-1 to 81-8-11.
Savings associations, §§81-12-1 to 81-12-229.
Savings banks, §§81-14-1 to 81-14-403.
Trust business.
- Generally, §§81-27-1.001 to 81-27-8.131.

FINES.
Bank directors, officers or employees violating banking provisions, §§81-1-121, 81-1-123.
Bank officials.
- False reports or false statements, §81-1-101.

Consumer loan brokers.
- Administrative fine for charging and collecting service charge or advance fee, §81-19-17.

Credit unions.
- Failure to transmit oath of board of directors, §81-13-25.

Failure to make annual report on condition, §81-13-15.
Mortgage brokers, lenders, loan originators, §81-18-43.
Savings associations.
- Cease and desist order violations, §81-12-213.
  - Director, officer or employee violating, §81-12-215.
- Criminal penalty for violations generally, §81-12-207.

FINES —Cont'd
Savings associations —Cont'd
  Transacting business using term savings association without lawful authority, §81-12-41.
Savings banks.
  Directors, officers or employees in violation, §81-14-205.
  State savings bank in violation of provisions, §81-14-203.

FINGERPRINTS.
Banking examiners.
  Requirements of employment, §81-1-65.
Bank licensees.
  Multistate licensing system, §81-1-135.
Mortgage brokers, lenders, loan originators.
  License applicants, §81-18-9.

FIRE INSURANCE.
Real estate loans invested in by savings association.
  Borrower's choice, §81-12-163.

FISCAL YEAR.
Credit unions, §81-13-23.

FORECLOSURE.
Mortgages and deeds of trusts.
  Making mortgage loan with intent to foreclose.
    Mortgage brokers or lenders, §81-18-27.
Savings associations.
  Reinstatement of loan prior to foreclosure sale, §81-12-169.

FOREIGN BANKS.
Activities by investors not considered to be transacting or engaging in business in state, §81-5-41.
Fiduciary capacity.
  Out-of-state bank or trust company acting as, §81-5-43.
Mississippi international banking act, §§81-25-1 to 81-25-203.

FOREIGN CAPITAL STOCK SAVINGS ASSOCIATIONS.
Domiciled in state, not deemed foreign association, §81-12-191.

FOREIGN CREDIT UNIONS, §81-13-81.

FOREIGN MUTUAL SAVINGS ASSOCIATIONS.
Domiciled in state, not deemed foreign association, §81-12-191.

FOREIGN SAVINGS ASSOCIATIONS, §§81-12-187, 81-12-189.

FRAUD.
Mortgages.
  Residential mortgage fraud.
    Mortgage brokers or lenders, §81-18-27.

FREEZING-OF-DEPOSIT AGREEMENTS.
Reopening closed banks, §81-9-13.

G

GOOD FAITH.
Bank directors performing duties in good faith, protection, §81-5-105.

GOVERNOR.
Commissioner of banking and consumer finance.
  Appointment and removal, §81-1-61.
State board of banking review.
  Appointment of members, §81-3-12.

GROSS NEGLIGENCE.
Bank director or officer, personal liability, §81-5-105.

GUARDIAN AND WARD.
Bank acting in fiduciary capacity as guardian.
  Bond or other security for faithful performance, §81-5-35.
  Out-of-state banking and trust associations and corporations, §81-5-43.
  Registering securities held in name of bank's nominee, §81-5-39.
Banks accepting account of guardian or other fiduciaries, §81-5-34.
Banks dealing with.
  Not obligated to inquire as to lack of or limitation upon power, §81-5-53.
Savings accounts at savings institutions.
  Association accepting account in name of guardian, §81-12-139.

GUARDIAN AND WARD —Cont'd
Savings banks.
  Acceptance of accounts in name of guardian, powers of fiduciary, §81-14-361.

H

HEARINGS.
Mortgage brokers, lenders, loan originators.
  Denial, suspension or revocation of license.
    Requesting, time, §81-18-37.
HOLDING COMPANIES.
Banks and financial institutions.
  Bank owned by holding company, §81-3-17.
  Control of banks, §§81-5-28, 81-5-29.
  Owning bank corporations, §81-3-17.
Out-of-state bank holding companies.
  Acquiring bank in state.
    Cooperative agreements between department and other bank regulatory agencies, §81-8-9.
  Establishing bank in state, §81-8-3.
    Applicability of state laws and rules and regulations, §81-8-7.
    Construction of chapter, §81-8-11.
Savings association ownership, §81-12-66.
  Acquisition of controlling interest in capital stock association, §81-12-67.
Savings banks, §81-14-401.
HOUSING.
Finance agency employees.
  Mortgage loan licensing and regulation.
    S.A.F.E. mortgage act exemptions, §81-18-5.
Mortgage loan licensing and regulation.
  S.A.F.E. mortgage act exemptions.
    Nonprofit organizations providing certain services, §81-18-5.

I

IMMUNITY.
Mortgage brokers, lenders, loan originators.
  Acting in accordance with applicable law, §81-18-47.
IMPAIRMENT OF CAPITAL STOCK OF BANK, §81-9-1.
INCOMPETENCY.
Savings accounts at savings institutions, §81-12-135.
  Attorney in fact authorized to make withdrawals, revocation of authority, §81-12-133.
Savings banks.
  Issuance of savings accounts to persons under disability, §81-14-369.
INCORPORATION.
Savings associations, §81-12-25.
  Generally, §§81-12-25 to 81-12-33.
INDEMNIFICATION.
Bank employees fined for criminal violations.
  Prohibition, §81-1-131.
Savings association's directors, officers or employees, §81-12-91.
INDENTURE.
Trust companies.
  Insolvent company as trustee in indenture.
    Appointment of new trustee, §§81-27-8.123 to 81-27-8.130.
INJUNCTIONS.
Bank appeals, §81-1-129.
Bank director, officer or employee violating.
  Civil penalty, §81-1-123.
Banks and financial institutions.
  Unsafe or unsound practice or unfair and discriminatory practice, §81-1-119.
Banks violating.
  Civil penalty, §81-1-121.
Consumer loan brokers, §81-19-17.
  Continuing violations, §81-19-29.
Insurance premium finance companies.
  Continuing violations, §81-21-9.
Mortgage brokers, lenders, loan originators.
  Continuing violations, §81-18-43.
Savings associations.
  Appeals, §81-12-219.
  Civil penalty for director, officer or employee in violation, §81-12-215.
  Civil penalty for violating, §81-12-213.
Savings banks, §81-14-201.
  Civil penalties for directors, officers or employees violation, §81-14-205.

INJUNCTIONS —Cont'd
Savings banks —Cont'd
  Civil penalties for savings banks violation, §81-14-203.
  Persons violating provisions, §81-14-55.
Trust companies.
  Civil penalty for violating, §81-27-7.101.
  Notice and opportunity for hearing, §81-27-7.102.
  Power of commissioner, §81-27-7.101.
  Takeover by commissioner, §81-27-8.106.

INSIDER LOANS.
Savings banks, §81-14-313.

INSOLVENT BANKS, §§81-9-1 to 81-9-75.

INSOLVENT SAVINGS BANKS.
Takeover by commissioner, §81-14-211.

INSOLVENT TRUST COMPANIES.
Company appointed trustee in indenture, deed of trust or other instruments.
  Appointment of new trustee, §§81-27-8.123 to 81-27-8.130.
Involuntary dissolution and liquidation, §§81-27-8.101 to 81-27-8.131.

INSTALLMENT CONTRACTS.
Bank or trust company making loan not exceeding five thousand dollars, §81-5-79.
Consumer loan brokers, §§81-19-1 to 81-19-35.

INSURANCE.
Banking corporations.
  Protection against robbery and burglary, §81-5-15.
Mortgage brokers, lenders, loan originators.
  Escrow account.
    Funds paid to mortgage company for payment of taxes or insurance, §81-18-36.
Real estate loans invested in by savings associations.
  Fire and casualty insurance, borrower's choice, §81-12-163.
  Title insurance, association requiring, §81-12-165.

INSURANCE —Cont'd
Savings association investing in real estate loans.
  Fire and casualty insurance, borrower's choice, §81-12-163.
  Title insurance, association requiring, §81-12-165.
Savings banks members' and customers' deposit accounts, §81-14-71.

INSURANCE PREMIUM FINANCE COMPANIES, §§81-21-1 to 81-21-27.
Application for licensing, §81-21-3.
Assessment of investigation and examination expenses, §81-21-3.
Attorneys' fees.
  Charges for, §81-21-17.
Cancellation of insurance.
  Premium finance agreement containing power of attorney clause enabling, §81-21-19.
  Return of unearned premiums, §81-21-21.
Charges permitted, §81-21-5.
Collection costs and attorneys' fees, charges for, §81-21-17.
Consumer finance fund.
  Deposit of funds collected, §81-21-3.
  Deposit of revenues in, §81-21-25.
Content requirements for premium finance agreements, §81-21-3.
Definitions, §81-21-1.
Delinquency charges, §81-21-17.
Enjoining continuing violations, §81-21-9.
Examination of persons suspected of conducting business requiring license.
  Power of commissioner, §81-21-10.
Exclusions from coverage of chapter, §81-21-27.
Fee for license, §81-21-3.
Filing of premium finance agreement not necessary to perfect validity, §81-21-23.
Finance charges, §81-21-15.
Grounds for revoking or suspending license, §81-21-7.
Hearing on revocation or suspension of license, §81-21-7.
Interest, §81-21-15.
  Delinquency charge, §81-21-17.
Investigation of license applicant, §81-21-5.

INSURANCE PREMIUM FINANCE COMPANIES —Cont'd
License required to engage in business, §81-21-3.
Notice on cancellation of insurance contract.
  Premium finance agreement containing power of attorney clause enabling, §81-21-19.
Penalty in lieu of revocation or suspension of license, §81-21-9.
Perfecting validity of agreement.
  Filing not necessary, §81-21-23.
Power of attorney.
  Cancellation of insurance contract by power, §81-21-19.
Premium finance agreement, §81-21-13.
  Requirements, §81-21-3.
Prepayment of obligations, §81-21-15.
Preservation of records, §81-21-11.
Records, §81-21-11.
Refund of unearned finance charge.
  Prepayment of obligation, §81-21-15.
Renewal of license, §81-21-5.
Return of unearned premiums on cancellation of insurance, §81-21-21.
Revocation or suspension of license, §81-21-7.
  Penalty in lieu of, §81-21-9.
Rules and regulations promulgated by commissioner, §81-21-3.
Service charge, §81-21-15.
Surplus over amount due from insured.
  Refund, §81-21-21.
Unearned premiums.
  Return on cancellation of contract, §81-21-21.

INTEREST.
Credit unions.
  Loans to members, §81-13-39.
Installment loans not exceeding five thousand dollars.
  Banks or trust companies making, §81-5-79.
Insurance premium finance companies, §81-21-15.
  Delinquency charge, §81-21-17.
Small loans made by banks or trust companies.
  Loans not exceeding five thousand dollars, §81-5-79.

INTEREST —Cont'd
Usury.
  Late payment charges by savings association.
    Not considered interest under usury law, §81-12-167.

INTERLOCKING DIRECTORATES.
Bank director prohibited from holding position in more than one bank, §81-5-49.

INTERNATIONAL BANKING, §§81-25-1 to 81-25-203.
Access by commissioner to books, accounts and records, §81-25-153.
Acquisition of control, notice, §81-25-141.
Activities not prohibited, §81-25-103.
Amendments to articles of incorporation, §81-25-137.
Application to obtain certificate of authority, §81-25-115.
Application to procure license, §81-25-105.
  Content requirement, §81-25-105.
  Procedures for procuring license, §81-25-107.
Appointment of commissioner as agent, representative and attorney, §81-25-133.
Approval of commissioner to close office, §81-25-165.
Articles of incorporation.
  Filing of amendment, §81-25-137.
Assessment of supervisory or examination fees, §81-25-147.
Assets of business separate and apart from assets of business outside of state, §81-25-155.
Asset to liability ratio, §81-25-163.
Authority of commissioner, §81-25-5.
Certificate of authority.
  Required to transact business, §81-25-115.
  Suspension or revocation by commissioner, §81-25-115.
Civil penalties for violations, §81-25-147.
Closing of office, approval of commissioner, §81-25-165.
Control acquisition, notice, §81-25-141.
Definitions, §81-25-3.
Deposits.
  Deposit requirements, §81-25-159.

INTERNATIONAL BANKING —Cont'd

Deposits —Cont'd
  Permissible activities, §81-25-117.
  Uninsured deposits and credits.
    Notice requirement, §81-25-157.
Enforcement power and authority of commissioner, §81-25-147.
Examination by commissioner, §81-25-145.
Federal branch or federal agency concurrently maintained in state, §81-25-111.
Fee for license application, §81-25-109.
Fiduciary activities permitted at agency or representative offices, §81-25-115.
Foreign banks conducting business in state.
  Rights, privileges and powers, §81-25-113.
Foreign banks owning or controlling domestic banks.
  Authority to apply state standards or requirements, §81-25-53.
  Discrimination against foreign bank prohibited, §81-25-53.
  Intention of article, §81-25-51.
Insurance of deposits with federal deposit insurance company.
  Notice that deposits not insured, §81-25-157.
Intention of provisions, §81-25-1.
  Direct offices of foreign banks, §81-25-157.
Interest on deposits.
  Limitations on payment, §81-25-159.
Interstate Mississippi state branch by out-of-state foreign branch.
  Criteria, standards, conditions, etc., §81-25-203.
  Establishment, §81-25-203.
  Intention of article, §81-25-201.
Legislative intent, §81-25-101.
License required to transact business, §81-25-103.
  Application, §81-25-105.
  Fee, §81-25-109.
  Procedures for procuring, §81-25-107.
  Prohibitions under license, §81-25-111.
License to establish and maintain representative office in state.
  Amendment, §81-25-139.
  Application, §81-25-121.

INTERNATIONAL BANKING —Cont'd

License to establish and maintain representative office in state —Cont'd
  Posting, §81-25-129.
  Procedures for applying, §81-25-123.
  Required, §81-25-129.
  Revocation, §81-25-127.
  Suspension or revocation, §§81-25-167, 81-25-169.
  Transfer restriction, §81-25-131.
Limitations on payments of interest on deposits, §81-25-159.
Loans, permissible activities, §81-25-117.
Merger.
  Notice, §81-25-141.
Mississippi international banking act, §81-25-1.
Notice.
  Acquisition of control or merger, §81-25-141.
  Deposits and credit balances not insured, §81-25-157.
  Relocation of office, §81-25-143.
Permissible activities, §81-25-117.
  Representative office established in state, §81-25-125.
Prohibited activities, §81-25-117.
  Foreign banks, §81-25-103.
Public access to reports, §81-25-151.
Ratio of assets to liabilities, §81-25-163.
Receipt and renewal of deposit, §81-25-117.
Records, §81-25-153.
Regulation of operations of foreign banks, §81-25-113.
Relocation of office, notice, §81-25-143.
Reports.
  Filing with commissioner, §81-25-149.
  Subject to subpoena and public access, §81-25-151.
Representative office in state.
  License to establish and maintain.
    Amendment, §81-25-139.
    Application, §81-25-121.
    Posting of license, §81-25-129.
    Procedures for applying, §81-25-123.
    Required, §81-25-119.
    Revocation, §81-25-127.
    Suspension or revocation, §§81-25-167, 81-25-169.

INTERNATIONAL BANKING —Cont'd
Representative office in state —Cont'd
License to establish and maintain —Cont'd
Transfer restriction, §81-25-131.
Permissible activities by foreign bank, §81-25-125.
Rules and regulations promulgated by commissioner, §81-25-5.
Securities required, §81-25-161.
Seizure of property by commissioner, §81-25-171.
Separation of assets of business in state with assets of business outside of state, §81-25-155.
Service of process, §81-25-135.
Appointment of commissioner as agent, representative and attorney, §81-25-133.
Severability of provisions, §81-25-7.
Subpoenas.
Reports subject to, §81-25-151.
Supervisory power of commissioner, §81-25-147.
Takeover by commissioner, §81-25-171.
Unsafe or unsound banking practices.
Takeover by commissioner, §81-25-171.

INTERSTATE BANK BRANCHING, §§81-23-1 to 81-23-25.
Application for interstate branching transaction.
Filing by Mississippi bank, §81-23-11.
Assessment of supervisory and examination fees by commissioner, §81-23-17.
Authorization of Mississippi bank to enter into interstate branching transaction, §81-23-7.
Change in control of out-of-state bank, notice required, §81-23-23.
Control restrictions on interstate branching transactions, §81-23-9.
Definitions, §81-23-5.
Enforcement actions against out-of-state bank by commissioner, §81-23-19.
Examinations of branches established and maintained by commissioner, §81-23-17.
Filing application for interstate branching transaction, §81-23-11.

INTERSTATE BANK BRANCHING —Cont'd
Information sharing agreements entered into by commissioner, §81-23-17.
Intent of provisions, §81-23-3.
Interstate bank branching act, §81-23-1.
Mississippi banks entering into interstate branching transactions, authorization, §81-23-7.
Notice of change in control out-of-state bank, §81-23-23.
Notice of proposed interstate branching transaction.
Out-of-state bank resulting bank pursuant to transaction, §81-23-13.
Out-of-state bank establishing and maintaining branch.
Permissible activities, §81-23-15.
Out-of-state bank resulting bank pursuant to transaction.
Requirement, §81-23-13.
Periodic report requirements prescribed by commissioner, §81-23-17.
Permissible activities, §81-23-15.
Reports.
Periodic report requirements prescribed by commissioner, §81-23-17.
Restrictions on interstate branching transactions, §81-23-9.
Rules and regulations promulgated by commissioner, §81-23-21.
Sale of insolvent banks.
Restrictions on interstate branching transactions, §81-23-9.
Severability of provisions, §81-23-25.
Unsafe or unsound banking practices.
Enforcement actions by commissioner, §81-23-19.

INVENTORY.
Trust companies.
Takeover by commissioner, §81-27-8.109.

INVESTIGATIONS.
Debt management services.
Complaints, commissioner's powers and duties, §81-22-17.

INVESTMENTS.
Banks and financial institutions.
  Trust funds, §81-5-33.
Savings accounts at savings institutions.
  Legal investments in, §81-12-147.
Savings associations.
  Loans and other investments, §81-12-159.
  Real estate, limitations, §81-12-105.
  Savings accounts, legal investment, §81-12-147.
  Securities in which association may invest, §§81-12-155, 81-12-157.
Savings banks, §§81-14-301 to 81-14-321.
  Savings accounts as legal investment, §81-14-385.
Trust companies, §§81-27-5.101 to 81-27-5.105.

J

JOINT AND SEVERAL LIABILITY.
Trust company loan in violation of provisions, §81-27-5.201.

L

LATE PAYMENT CHARGES.
Savings associations.
  Amount on delinquency, not considered interest under usury law, §81-12-167.

LEASES.
Children and minors.
  Safe deposit boxes, §81-5-61.
Minors leasing safe deposit boxes, §81-5-61.
Safe deposit boxes.
  Lease to minors, §81-5-61.

LETTERS OF CREDIT.
Savings banks.
  Issuance, §81-14-301.

LEVEES AND LEVEE DISTRICTS.
Taxes.
  Bank preferred stock.
    Exempt from district taxes, §81-5-23.
  Banks' earned surplus account.
    Exempt from district taxes, §81-3-11.
  Farmers' credit associations.
    Exempt from districts taxes, §81-17-25.

LICENSES AND PERMITS.
Consumer loan brokers, §§81-19-1 to 81-19-35.
Debt management services, §81-22-5.
  Bonds, surety, §81-22-7.
  Commissioner's powers and duties, §81-22-17.
  Suspension or revocation, §81-22-25.
Insurance premium finance companies, §§81-21-1 to 81-21-27.
Mortgage brokers, lenders, loan originators.
  Generally, §§81-18-1 to 81-18-63.
Trust companies.
  Voluntary dissolution and liquidation.
    Permit to liquidate, §81-27-8.002.

LIMITED LIABILITY TRUST COMPANIES, §§81-27-6.301 to 81-27-6.310.
Board of managers, election by participants, §81-27-6.304.
Construction of provisions as relating to trust companies in general, §81-27-6.310.
Contracting debts and obligations, §81-27-6.303.
Dissolution, §81-27-6.307.
Distributions to participants, §81-27-6.309.
Interest in company personal to participant, §81-27-6.306.
Liability of participants and managers, §81-27-6.302.
Management vested in participants, §81-27-6.304.
Notice of full liability, filing, §81-27-6.301.
Profit and loss allocation among participants, §81-27-6.308.
Reduction of participant's capital, §81-27-6.305.
Transfer of participant's interest, §81-27-6.306.
Trust companies generally, §§81-27-1.001 to 81-27-8.131.
Withdrawal of participant's capital, §81-27-6.305.

LIQUIDATING CORPORATION.
Insolvent banks, §§81-9-1 to 81-9-75.

LIQUIDATION.
Dissolution of solvent bank, §81-5-101.
Insolvent banks, §§81-9-1 to 81-9-75.
Saving banks, §81-14-211.

LIQUIDATION —Cont'd
Trust companies.
Involuntary dissolution and liquidation, §§81-27-8.101 to 81-27-8.131.
Voluntary dissolution and liquidation, §§81-27-8.001 to 81-27-8.006.

LOAN BROKERS.
Consumer loan brokers, §§81-19-1 to 81-19-35.

LOAN PRODUCTION OFFICE.
Fee for filing application, §81-1-115.

LOANS.
Agricultural credit corporations, §§81-15-1 to 81-15-31.
Bank directors and executive officers.
Bank lending money to, §81-5-51.
Consumer loan brokers, §§81-19-1 to 81-19-35.
Credit unions.
Authority to lend to members, §81-13-39.
Limitation on power to borrow money, §81-13-41.
Repayment of loans by members, §81-13-45.
Rules and regulations to be followed, §81-13-43.
Debt management services.
Prohibited acts, §81-22-19.
Department of banking and consumer finance officers and employees.
Borrowing money from state banks, §81-1-77.
Farmers' credit associations, §§81-17-1 to 81-17-25.
Insurance premium finance companies, §§81-21-1 to 81-21-27.
Loan number, loan amount, other specific loan information.
Use by person other than lender, §§81-29-1, 81-29-3.
Savings associations.
Generally, §§81-12-1 to 81-12-229.
Savings banks, §§81-14-301 to 81-14-321.
Specific loan information.
Use by person other than lender, §§81-29-1, 81-29-3.
Trademark or trade name of lender.
Use by person other than owner of trademark or trade name, §§81-29-1, 81-29-3.

LOANS —Cont'd
Trust companies, limitations, §81-27-5.201.

LOCK-IN AGREEMENTS.
Mortgage brokers, lenders, §81-18-28.

M

MANUFACTURED HOMES.
Mississippi S.A.F.E. mortgage act.
Retail sellers.
Applicability, §81-18-53.
Retail sellers.
Mississippi S.A.F.E. mortgage act.
Applicability, §81-18-53.
Sale or transfer.
Mississippi S.A.F.E. mortgage act.
Applicability to retail sellers, §81-18-53.

MERGER OR CONSOLIDATION.
Banks, §81-5-85.
Branches resulting from consolidation, §81-7-7.
Restrictions upon establishment, §81-7-8.
Interstate bank branching, §§81-23-1 to 81-23-25.
Savings banks, §81-14-127.
Credit unions, §81-13-79.
International banking.
Notice, §81-25-141.
Out-of-state banks.
Interstate bank branching, §§81-23-1 to 81-23-25.
Savings associations.
Supervisory merger, §81-12-184.
Savings banks.
Federal charters with state savings banks, §81-14-119.
Like savings banks, §81-14-111.
Merger-conversion or simultaneous merger-conversion, §§81-14-113, 81-14-117.
Mutual and stock savings bank, §81-14-115.
Supervisory consolidation ordered by commissioner, §81-14-127.
Supervisory merger ordered by commissioner, §81-14-127.
Trust companies, §81-27-6.401.
Application, §81-27-6.402.
Approval by commissioner, §81-27-6.403.
Dissenters' rights, §81-27-6.404.

MERGER OR CONSOLIDATION —Cont'd
Trust companies —Cont'd
  Out-of-state trust institutions, notice, §81-27-2.303.

MILEAGE EXPENSES.
Department of banking and consumer finance.
  Commissioner, examiners and employees, §81-1-71.

MISSISSIPPI CREDIT UNION LEAGUE.
Acceptance of members, §81-13-13.

MISSISSIPPI INTERNATIONAL BANKING ACT, §§81-25-1 to 81-25-203.

MISSISSIPPI RURAL CREDIT LAW, §§81-15-1 to 81-15-31.

MISSISSIPPI S.A.F.E. MORTGAGE ACT, §§81-18-1 to 81-18-63.

MORTGAGE BROKERS, LENDERS, LOAN ORIGINATORS, §§81-18-1 to 81-18-63.
Acquisition of interest in licensee, §81-18-19.
Action involving owner or principal of company.
  Notification to commissioner, §81-18-23.
Additional full-time employees authorized, §81-18-45.
Advertisements, §81-18-31.
Annual report by licensee, §81-18-23.
Applicability of chapter, §81-18-53.
Bankruptcy or reorganization.
  Report required, §81-18-23.
Bond by licensee.
  Acquisition of interest in licensee, §81-18-19.
  Enforcement, §81-18-43.
  License applicants, §81-18-9.
  Mortgage loan originator, §81-18-11.
Borrower requests for information about home loan account, failure to respond, §81-18-55.
Branch.
  Application to open, §81-18-17.
  Approval required to open, §81-18-17.
  Change of address.
    Notification, §81-18-17.
  Defined, §81-18-3.
  Fees.
    Application to open, §81-18-17.

MORTGAGE BROKERS, LENDERS, LOAN ORIGINATORS —Cont'd
Branch —Cont'd
  Location considered, §81-18-3.
  Renewal of license.
    Fee, §81-18-17.
  Requirements, §81-18-25.
Brokering loans only to licensed or registered companies, §81-18-27.
Cease and desist orders, §81-18-39.
Change of address.
  Notification, §81-18-17.
Civil penalties, §81-18-43.
  Subpoenas, noncompliance, §81-18-40.
  Violations of orders issued by commissioner, §81-18-39.
Commission, bonus or fee paid to unlicensed person, §81-18-27.
Commitment.
  Defined, §81-18-3.
Confidentiality of information.
  Examinations and investigations, §81-18-21.
  Nationwide mortgage licensing system and registry, §81-18-63.
Continuation of loan servicing, §81-18-41.
Continuing education, §81-18-14.
  Mortgage loan originators.
    License renewal requirement, §81-18-15.
Conviction of license applicant, director, officer or partner.
  Report required, §81-18-23.
Credit report.
  Submission with application for license, §81-18-9.
Criminal history record checks.
  License applicants, §81-18-9.
  Mortgage loan originators.
    Licensed or registered through nationwide system and registry, §81-18-61.
Criminal penalties, §81-18-43.
Definitions, §81-18-3.
Delinquent loan, reinstatement upon tender of payment.
  Refusal to reinstate, prohibited act, §81-18-55.
Direct payments, compensation or advance fees, §81-18-27.
Effective date of act, §81-18-49.
Enjoining continuing violations, §81-18-43.

MORTGAGE BROKERS, LENDERS, LOAN ORIGINATORS —Cont'd
Escrow account.
  Funds paid to mortgage company for payment of taxes or insurance, §81-18-36.
Examination of books and records by department, §81-18-21.
Exemptions, §81-18-5.
Fines.
  Civil penalties, §81-18-43.
Fingerprints.
  License applicants, §81-18-9.
Foreclosure.
  Making loan with intent to foreclose, §81-18-27.
Fraudulent transactions or underwriting practices, §81-18-27.
Grandfather provisions, §81-18-49.
Hearings.
  Denial, suspension or revocation of license or registration.
    Requesting, time, §81-18-37.
Immunity of licensees.
  Acting in accordance with applicable law, §81-18-47.
Individual borrower files.
  Requirements, §81-18-33.
Insurance.
  Escrow account.
    Funds paid to mortgage company for payment of taxes or insurance, §81-18-36.
Investigation of applicant for license or licensee, §81-18-21.
Journal of transactions, §81-18-35.
Judgment recovered against.
  Failure to pay nonappealable final judgment.
    Revocation or suspension of license or registration, §81-18-37.
License.
  Acquisition of interest in licensee.
    Requirements, §81-18-19.
  Application, §81-18-9.
    Acquisition of interest in licensee, §81-18-19.
  Branch offices, §81-18-17.
  Civil penalties, §81-18-43.
  Continuing education requirements, §81-18-14.
  Credit report.
    Submission with application, §81-18-9.

MORTGAGE BROKERS, LENDERS, LOAN ORIGINATORS —Cont'd
License —Cont'd
  Criminal history record checks, §81-18-9.
  Defined, §81-18-3.
  Denial.
    Violations of chapter, §81-18-43.
  Education requirements, §81-18-14.
  Fees, §81-18-15.
    Branch offices, §81-18-17.
  Information required, §81-18-17.
  License defined, §81-18-3.
  Nationwide mortgage licensing system and registry.
    Application made through, §81-18-9.
      Branch office, §81-18-17.
    Change of address.
      Notification through, §81-18-17.
    Channeling agent for requesting and distributing information, §81-18-13.
    Collection and maintenance of records and fees, §81-18-13.
    Confidentiality of information, §81-18-63.
    Continuing education courses, §81-18-15.
    Defined, §81-18-3.
    Fees, payment through, §81-18-15.
    Filing applications, §81-18-9.
    Information furnished by licensee, §81-18-13.
    Mortgage loan originators.
      Release from employment.
        Notification, §81-18-17.
      Required to be licensed and registered through, §81-18-61.
    Reports required of licensee, §81-18-23.
    Requirements to comply with, §81-18-61.
  Principal place of business, §81-18-25.
  Renewal, §81-18-15.
    Fee, §81-18-15.
    Minimum standards.
      Mortgage loan originators, §81-18-15.
  Required, §81-18-7.
  Suspension or revocation, §81-18-37.
    Continuation of loan servicing, §81-18-41.
    Violations of chapter, §81-18-43.
  Transacting business without a license, §81-18-7.

MORTGAGE BROKERS, LENDERS, LOAN ORIGINATORS —Cont'd
License —Cont'd
  Transfer or assignment, prohibition, §81-18-17.
  Written test requirement, §81-18-14.
Loan payoff.
  Refusal to provide within three days, §81-18-27.
Loan processor or underwriter.
  Defined, §81-18-3.
Loan servicing under existing contracts, §81-18-41.
Local ordinances and regulations in compliance with provisions.
  Enactment authorized, §81-18-8.
Lock-in agreement.
  Authorized, §81-18-28.
  Defined, §81-18-3.
  Lock-in fee.
    Defined, §81-18-3.
    Maximum fee charged, §81-18-28.
Maintenance of books, accounts and records, §81-18-21.
Manufactured homes, retail sellers.
  Applicability of chapter, §81-18-53.
Misrepresentations or false promises, §81-18-27.
Mississippi S.A.F.E. mortgage act.
  Short title, §81-18-1.
Mortgage broker.
  Defined, §81-18-3.
  Real estate brokerage activity.
    Defined, §81-18-3.
Mortgage lender.
  Defined, §81-18-3.
  Exemption.
    Licensed under small loan regulatory law and small loan privilege tax law, §81-18-5.
Mortgage loan originator.
  Bond, §81-18-11.
    New bond.
      Action commenced on bond, §81-18-11.
    Penal sum, §81-18-11.
    Required, §81-18-11.
  Defined, §81-18-3.
  Nationwide mortgage licensing system and registry.
    Required to be licensed and registered through, §81-18-61.
  Registered mortgage loan originator.
    Defined, §81-18-3.
    Exemption, §81-18-5.

MORTGAGE BROKERS, LENDERS, LOAN ORIGINATORS —Cont'd
Mortgage loan originator —Cont'd
  Release from employment.
    Notification, §81-18-17.
Mortgage origination agreement.
  Required statements, §81-18-33.
Nationwide mortgage licensing system and registry.
  Branch office application made through, §81-18-17.
  Change of address.
    Notification through, §81-18-17.
  Channeling agent for requesting and distributing information, §81-18-13.
  Collection and maintenance of records and fees, §81-18-13.
  Confidentiality of information, §81-18-63.
  Continuing education courses, §81-18-15.
  Defined, §81-18-3.
  Fees, payment through, §81-18-15.
  Filing applications, §81-18-9.
  Information furnished by licensee, §81-18-13.
  License application made through, §81-18-9.
  Mortgage loan originators.
    Release from employment.
      Notification, §81-18-17.
    Required to be licensed and registered through, §81-18-61.
  Reports required of licensee, §81-18-23.
  Requirements to comply with, §81-18-61.
Nontraditional mortgage product.
  Defined, §81-18-3.
Notice.
  Denial, suspension or revocation of license or registration, §81-18-37.
  Failure to provide timely notice of itemized reasons why loan is in default, §81-18-55.
Persons not subject to provisions, §81-18-5.
Presumption licensee acted in accordance with applicable law, §81-18-47.
Presumption loan made with intent to foreclose, §81-18-27.
Principal place of business, §81-18-25.
  Change of address.
    Notification, §81-18-17.

MORTGAGE BROKERS, LENDERS, LOAN ORIGINATORS —Cont'd
Prohibited acts, §§81-18-27, 81-18-55.
Promulgation of rules and regulations, §81-18-29.
  Advertisements, §81-18-31.
Property taxes.
  Escrow account.
    Funds paid to mortgage company for payment of taxes or insurance, §81-18-36.
Records, §81-18-21.
  Individual borrower files.
    Requirements, §81-18-33.
  Journal of transaction, §81-18-35.
Repealer, §81-18-51.
Reports required of licensee, §81-18-23.
Residential mortgage loan transactions, prohibited activities, §81-18-55.
Revocation or suspension proceedings.
  Report required, §81-18-23.
Rules and regulations, §81-18-29.
  Advertisements, §81-18-31.
Satisfaction of loan.
  Refusal to issue, §81-18-27.
Serviced loans.
  Journal of transactions, §81-18-35.
Short title.
  Mississippi S.A.F.E. mortgage act, §81-18-1.
Signage at principal place of business, §81-18-25.
Statement detailing loan information, lender to provide to borrower, §81-18-55.
Subpoena.
  Commissioner authorized to issue, noncompliance, §81-18-40.
Sunset provisions, §81-18-51.
Trademark, trade name, specific loan information.
  Use by person other than owner or lender, §§81-29-1, 81-29-3.
Transacting business without license or registration.
  Liability of partner, officer, director or contractor, §81-18-7.
  Obligation of borrower not affected, §81-18-7.
Transaction journal, §81-18-35.

MORTGAGE BROKERS, LENDERS, LOAN ORIGINATORS —Cont'd
Truth in lending act disclosures.
  Individual borrower's file to contain, §81-18-33.
Unique identifiers.
  Required, advertisements, §81-18-31.
Violations of law by licensee.
  Cease and deceased orders, §81-18-39.
  Criminal penalties, §81-18-43.

MORTGAGE COMPANIES.
Licensing and regulation generally, §§81-18-1 to 81-18-63.
Trademark, trade name, specific loan information.
  Use by person other than owner or lender, §§81-29-1, 81-29-3.

MORTGAGE LENDERS.
Licensing and regulation generally, §§81-18-1 to 81-18-63.

MORTGAGE LOAN ORIGINATORS.
Licensing and regulation generally, §§81-18-1 to 81-18-63.

MORTGAGES AND DEEDS OF TRUST.
Advertising mortgage loans.
  Mortgage brokers, lenders, §81-18-31.
Foreclosures.
  Making mortgage loan with intent to foreclose.
    Mortgage brokers or lenders, §81-18-27.
Lock-in agreements, maximum lock-in fee.
  Mortgage brokers, lenders, §81-18-28.
Mortgage brokers, lenders, loan originators.
  Licensing and regulation, §§81-18-1 to 81-18-63.
Savings associations.
  Real estate loans generally, §§81-12-161 to 81-12-171.
Trust companies.
  Insolvent company trustee in deed of trust.
    Appointment of new trustee, §§81-27-8.123 to 81-27-8.130.
  Investments in mortgage related securities, §81-27-5.101.

MULTISTATE TRUST INSTITUTIONS ACT, §§81-27-1.001 to 81-27-2.303.

MUNICIPALITIES.
Mortgage brokers, lenders, loan originators.
  Enactment of ordinance in compliance with S.A.F.E. mortgage act.
    Authorized, §81-18-8.

MUTUAL FUNDS.
Trust companies.
  Investments in, §81-27-5.104.

MUTUAL SAVINGS ASSOCIATIONS.
Annual meeting of members, §81-12-71.
Conversion into federal mutual savings association, §81-12-53.
Conversion of federal association into state-chartered association, §81-12-55.
Directors, §81-12-81.
Organization generally, §81-12-35.
Proxy, voting by members, §81-12-71.
Savings associations generally, §§81-12-1 to 81-12-229.
Voting by members, §81-12-71.

MUTUAL SAVINGS BANKS.
Conversion of stock savings bank to mutual savings bank, §81-14-109.
Conversion to stock savings bank, §81-14-107.
Membership, §81-14-251.
Merger, §§81-14-111 to 81-14-119.
Notice requirement for annual meeting of members, §81-14-261.
Savings banks generally, §§81-14-1 to 81-14-403.

N

NAMES.
Banks and financial institutions.
  Bank or banking to be included in name, §81-3-3.
  Branch banks, §81-7-3.
  Permitting person to use name in taking promissory notes, mortgages or deeds of trust, §81-5-3.
Credit unions.
  Restrictions on use of term credit union, §81-13-9.
Savings associations, §81-12-41.
  Change of name, §81-12-43.
  Doing business under name containing term savings association without lawful authorization, §81-12-41.

NAMES —Cont'd
Savings banks.
  SSB used in legal name, §81-14-55.
Trust companies, §81-27-1.105.

NATIONAL CREDIT UNION ADMINISTRATION.
Insurance of credit union accounts, §81-13-4.

NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY.
S.A.F.E. mortgage act, §§81-18-1 to 81-18-63.

NEGLIGENCE.
Bank directors or officers, personal liability.
  Gross negligence, §81-5-105.

NONPROFIT CORPORATIONS.
Mortgage loan licensing and regulation.
  S.A.F.E. mortgage act exemptions, §81-18-5.

NOTICE.
Banks and financial institutions.
  Charges of unsafe or unsound practice or unfair and discriminatory practice, §81-1-119.
Consumer loan brokers.
  Hearing on denial or revocation of license, §81-19-35.
Credit unions.
  Temporary suspension of operations by commissioner, §81-13-19.
Debt management services.
  Consumer notice, written agreement containing, §81-22-11.
  Third party payment processors.
    Intent by licensee to use, §81-22-28.
Dissolution of solvent bank, §81-5-101.
International banking.
  Deposits and credit balances not insured, §81-25-157.
Mortgage brokers, lenders, loan originators.
  Change of address or business location, §81-18-17.
  Denial, suspension or revocation of license or registration, §81-18-37.
  Failure to provide timely notice of itemized reasons why loan is in default, §81-18-55.
  Release of originator from employment, §81-18-17.

NOTICE —Cont'd
Savings associations.
  Charges of unsafe or unsound practice or unfair and discriminatory practice, §81-12-211.
  Filing of petition for certificate of incorporation, §81-12-29.
  Rules or regulations promulgated by commissioner, publication, §81-12-7.
Savings banks.
  Annual meeting of member, §81-14-261.
  Charges of unsafe or unsound practice, §81-14-207.
  Right of setoff on deposit account exercised, §81-14-367.
Trust companies.
  Desire to establish office, §81-27-2.004.
  Establishment of interstate trust office by out-of-state trust institution, §81-27-2.104.
  Out-of-state trust institutions, merger, consolidation or other transaction changing control, §81-27-2.303.
  Takeover by commissioner.
    Answer to seizure notice by trust company, §81-27-8.106.
    Claims against dissolved companies, §81-27-8.110.
      Rejected claims, §81-27-8.111.
    Filing claims, §81-27-8.110.
    Seizure notice, §81-27-8.103.
    Trust institution's notice, §81-27-8.104.
  Voluntary liquidation of affairs, §81-27-8.003.

O

OATHS OR AFFIRMATIONS.
Bank directors.
  Faithful and diligent performance of duties, §81-5-45.
Commissioner and deputy commissioner of banking and consumer finance, §81-1-65.
Credit union board of directors, §81-13-25.

ORDINANCES.
Mortgage brokers, lenders, loan originators.
  Enactment of ordinance in compliance with S.A.F.E. mortgage act.
    Authorized, §81-18-8.

OUT-OF-STATE BANKS.
Bank holding company.
  Establishing bank in Mississippi, §§81-8-1 to 81-8-11.
International banking act, §§81-25-1 to 81-25-203.
Interstate bank branching, §§81-23-1 to 81-23-25.

OUT-OF-STATE TRUST INSTITUTIONS.
Multistate trust institution act generally, §§81-27-1.001 to 81-27-2.303.

P

PAYROLL SAVINGS PLANS.
Savings associations, §81-12-131.

PERJURY.
Credit unions.
  False affidavit to statement, report or other document, §81-13-71.

PERSONAL PROPERTY.
Banks and financial institutions.
  Stock.
    Personal property, §81-5-17.
Trust companies.
  Lease financing transactions.
    Becoming owner and lessor of tangible personal property for, §81-27-5.202.

PETITIONS.
Banks and financial institutions.
  Insolvent banks.
    Discharge, petition for, §81-9-37.
    Petition for appointment of receiver, §81-9-17.
    Petition to liquidate, §§81-9-43, 81-9-45.
Credit unions.
  Petition for certificate of incorporation, §81-13-1.
Savings associations.
  Certificate of incorporation, §§81-12-25 to 81-12-33.
Trust companies.
  Indenture, deed of trust or other instrument of like character.
    Insolvency of trust company appointed as trustee, §§81-27-8.125 to 81-27-8.129.

PLEDGE OF ASSETS.
Trust companies, prohibition, §81-27-5.402.

POD ACCOUNTS.
Establishment by bank, §81-5-62.
Savings accounts at savings institutions, §81-12-145.
Savings banks, §81-14-363.

POSTERS.
Savings banks.
False advertising, §81-14-173.

POWER OF ATTORNEY.
Insurance premium finance companies.
Cancellation of insurance contract by power, §81-21-19.
Savings association savings accounts.
Authorization of attorney in fact to make withdrawals, revocation of authority, §81-12-133.
Savings banks.
Recognition by savings bank of authority of individual holding, §81-14-377.

PREFERRED STOCK.
Banking corporations, §81-5-23.
Savings associations, issuance, §81-12-51.

PREMIUM FINANCE AGREEMENTS.
Insurance premium finance companies, §§81-21-1 to 81-21-27.

PRESUMPTIONS.
Mortgage brokers, lenders, originators.
Licensee acted in accordance with applicable law, §81-18-47.
Mortgages.
Residential mortgage loan made with intent to foreclose, §81-18-27.

PRIVACY.
Bank depositor information, §81-5-55.

PRIVATE TRUST COMPANY, §§81-27-4.301 to 81-27-4.303.

PRIVILEGED COMMUNICATIONS.
Banks and financial institutions.
Self-assessment reports, §81-5-153.
Self-evaluation privilege, depository institutions, §81-5-153.

PROFESSIONS AND OCCUPATIONS.
Consumer loan brokers, §§81-19-1 to 81-19-35.

PROPERTY TAXES.
Credit unions.
Real and personal property subject to taxation, §81-13-63.

PROXIES.
Credit unions.
Members voting by, §81-13-69.
Savings associations.
Members of mutual association voting by, §81-12-71.
Stockholders of capital stock association voting by, §81-12-73.
Savings banks.
Exercise of voting rights and affairs by, §81-14-259.
Voluntary dissolution by stockholders or members.
Voting by proxy, §81-14-121.

PUBLICATION OF NOTICE.
Dissolution of solvent bank, §81-5-101.
Savings associations.
Rules or regulations promulgated by commissioner, §81-12-7.
Trust companies.
Voluntary liquidation of affairs, §81-27-8.003.

R

REAL PROPERTY.
Banks holding, §81-5-87.
Consumer loan brokers.
Contract requirements when loan secured by real property, §81-19-21.
Savings associations.
Appraisal on purchase, §81-12-105.
Investment limitations, §81-12-105.
Real estate loans generally, §§81-12-161 to 81-12-171.
Trust company acquiring, §81-27-5.002.

RECEIVERS.
Bank insolvency.
Appointment, powers generally, §§81-9-1 to 81-9-75.
Savings associations.
Appointment by commissioner, §§81-12-183, 81-12-185.
Savings banks.
Appointment by commissioner, §81-14-211.

RECORDS.
Banks and financial institutions.
  Preservation of old records, §81-5-7.
Consumer loan brokers, §81-19-25.
Credit unions, §81-13-73.
Debt management services.
  Maintenance, §81-22-15.
Insurance premium finance companies, §81-21-11.
Mortgage brokers, lenders, loan originators, §81-18-21.
  Individual borrower files.
    Requirements, §81-18-33.
  Journal of transaction, §81-18-35.
Savings associations.
  Branch office transactions, §81-12-97.
  Business transacted at home office, §81-12-95.
  Closing of books annually, §81-12-101.
  Copying or reproducing by photostatic, photographic or microfilming process, §81-12-111.
  Inspection of books and records, §81-12-77.
  Loan and investment records, §81-12-107.
  Maintenance by data processing services, §81-12-99.
  Membership and stockholder records, §81-12-109.
  Original record of transaction, agent to keep, §81-12-97.
Savings banks.
  Confidential information, §81-14-167.
  Copying or reproducing by photographic, photostatic or other process, §81-14-153.
Trust companies, §81-27-6.209.
  Criminal offenses relating to books and records, §81-27-6.206.

REDEMPTION.
Savings accounts at savings institutions, §81-12-153.

REGIONAL BANKING INSTITUTIONS, §§81-8-1 to 81-8-11.
Definitions, §81-8-1.
Out-of-state bank holding companies.
  Acquiring bank in state.
    Cooperative agreements between department and other bank regulatory agencies, §81-8-9.
  Establishing bank in state, §81-8-3.
    Applicability of state laws and rules and regulations, §81-8-7.

REGIONAL BANKING INSTITUTIONS —Cont'd
Out-of-state bank holding companies —Cont'd
  Establishing bank in state —Cont'd
    Construction of chapter, §81-8-11.

RELIANCE.
Bank director protecting, §81-5-105.

RELIGION.
Trust companies.
  Activities not requiring charter, license, registration as.
    Religious denomination, church acting as trustee, §81-27-1.102.

RELIGIOUS ORGANIZATIONS.
Trust companies.
  Activities not requiring charter, license, registration as.
    Religious denomination, church acting as trustee, §81-27-1.102.

REMOVAL ORDERS.
Banks and financial institutions, §81-1-103.
  Temporary removal of director, officer or employee, §81-1-127.
Savings associations, directors, §81-12-24.
Savings banks, directors, §81-14-209.
Trust companies, §81-27-7.104.

REORGANIZATION OF CORPORATIONS.
Savings associations, §81-12-65.

REPORTS.
Banks and financial institutions.
  Accounts of deceased depositor, §81-5-65.
  Call reports, §81-1-97.
    Copies, fees, failure to issue copy, §81-1-99.
  Depository financial institutions self-evaluation reports, §§81-5-151, 81-5-153.
Call reports.
  Banks, §§81-1-97, 81-1-99.
  Savings associations, §81-12-79.
    Commissioner to furnish copy, §81-12-229.
  Savings banks, §81-14-169.
    Copy provided by commissioner, §81-14-179.
Credit unions.
  Annual report on condition, §81-13-15.

REPORTS —Cont'd
Debt management services.
  Written reports to consumers, §81-22-15.
Department of banking and consumer finance.
  Commissioner's annual report to legislature, §81-1-113.
International banking.
  Filing with commissioner, §81-25-149.
  Subject to subpoena and public access, §81-25-151.
Interstate bank branching.
  Periodic report requirements prescribed by commissioner, §81-23-17.
Savings associations, §81-12-177.
  Call reports, §81-12-79.
    Commissioner to furnish copy, §81-12-229.
Savings banks.
  Call reports, §81-14-169.
    Copy provided by commissioner, §81-14-179.
Trust companies.
  Apparent crime, §81-27-6.211.

RESIDENTIAL MORTGAGE LOANS.
S.A.F.E. mortgage act.
  Mortgage brokers, lenders, loan originators.
    Licensing and regulating, §§81-18-1 to 81-18-63.

RIEGLE-NEAL INTERSTATE BANKING AND BRANCHING EFFICIENCY ACT.
Interstate bank branching, §§81-23-1 to 81-23-25.

RIGHT OF SURVIVORSHIP.
Joint bank accounts, §81-5-63.
Joint savings accounts, §81-12-137.
Savings banks.
  Joint accounts, §81-14-359.

ROBBERY.
Banking corporation to provide insurance protection and indemnity, §81-5-15.
Trust companies.
  Report of being victim of apparent robbery, §81-27-6.211.

RULE OF 78'S.
Insurance premium finance companies.
  Return of unearned premiums, §81-21-21.

RURAL CREDIT LAW, §§81-15-1 to 81-15-31.

S

S.A.F.E. MORTGAGE ACT, §§81-18-1 to 81-18-63.

SAFE DEPOSIT BOXES.
Leasing to minors, §81-5-61.

SAVINGS ACCOUNTS.
Lost or destroyed certificate or evidence of ownership of account.
  New account books, §81-14-373.
Savings associations generally, §§81-12-115 to 81-12-151.
Savings banks, §§81-14-357 to 81-14-385.

SAVINGS AND LOAN ASSOCIATIONS.
Savings association law, §§81-12-1 to 81-12-229.

SAVINGS ASSOCIATIONS, §§81-12-1 to 81-12-229.
Accounting principles and practices, §81-12-101.
Acknowledgment or proof of written instrument in which association interested.
  Public officer not disqualified from taking because of membership or employee status, §81-12-197.
Acquisition of controlling interest in capital stock association, §81-12-67.
Adequate net worth requirement.
  Capital stock associations, §81-12-37.
Advertising for deposits of money from public, §81-12-201.
Agents to keep original record of transaction of business, §81-12-97.
Annual meeting of members, §81-12-71.
Annual meeting of stockholders, §81-12-73.
Annual reports to commissioner, §81-12-177.
  Fees for filing, §81-12-193.
Appeals.
  Cease and desist orders, §81-12-219.
  Commissioner's orders.
    Final determination, §81-12-9.

SAVINGS ASSOCIATIONS —Cont'd
Appeals —Cont'd
  Commissioner's orders —Cont'd
    Final rule, regulation or order of commissioner, §81-12-205.
  State board of banking review.
    Final rule, regulation or order, §81-12-205.
Applicability of private corporation laws, §81-12-4.
Applicability of provisions to previously incorporated associations, §81-12-203.
Appraisal of real estate upon purchase, §81-12-105.
Approvals, orders and instructions of commissioner, §81-12-23.
Assets overvalued on association's books.
  Charging off, §81-12-103.
Attorney in connection with real estate loan.
  Borrower's right to select and pay, §§81-12-163, 81-12-165.
Audit annually of affairs, §81-12-177.
Avoiding loss on loan or investment.
  Operating business, managing or dealing in property, §81-12-173.
Bonds, surety.
  Incorporators.
    Organization of mutual associations, §81-12-35.
  Officers, attorneys, employees, agents and directors, §81-12-85.
Borrowers' right to inspect books and records, §81-12-77.
Borrowing limitation on savings liability and net worth, §81-12-49.
Branch offices, §§81-12-175, 81-12-176.
  Fee for filing application, §81-12-193.
  Records of transactions, §81-12-97.
Business transacted at home office.
  Complete records to be kept, §81-12-95.
Bylaws, §81-12-25.
Call reports, §81-12-79.
  Commissioner to furnish copy, §81-12-229.
Capital stock associations.
  Additional powers, §81-12-51.
  Annual meeting of stockholders, §81-12-73.
  Controlling interest, acquisition, §81-12-67.
  Conversion into capital stock associations, §§81-12-57, 81-12-59.

SAVINGS ASSOCIATIONS —Cont'd
Capital stock associations —Cont'd
  Conversion into federal association, §81-12-61.
  Conversion into state-chartered association, §81-12-55.
  Directors, §81-12-83.
  Notice of meeting of stockholders, §81-12-73.
  Organization generally, §§81-12-37, 81-12-39.
  Proxy, voting at meeting by, §81-12-73.
  Voting by stockholders, §81-12-73.
Cease and desist orders.
  Appeals, §81-12-219.
  Civil penalty for director, officer or employee in violation, §81-12-215.
  Civil penalty for violating, §81-12-213.
Certificate of approval.
  Filing with secretary of state, §81-12-33.
Certificate of authorization to transact business.
  Issuance to capital stock association, §81-12-39.
Certificate of dissolution.
  Termination of association, §81-12-69.
Certificate of incorporation.
  Fees for filing, §81-12-193.
  Filing with secretary of state, §81-12-33.
Chairman of incorporators.
  Organization of capital stock associations, §81-12-37.
  Organization of mutual associations, §81-12-35.
Change of name or location of home office, §81-12-43.
Civil penalty for violating cease and desist order, §81-12-213.
  Director, officer or employee violating, §81-12-215.
Closure of books annually, §81-12-101.
Communication with other members regarding meeting.
  Request of approximate number of members, §81-12-77.
Compliance statement filed by capital stock association, §81-12-39.
Concealing assets, books or records.
  Appointment of conservator, §81-12-181.
  Appointment of receiver by commissioner, §81-12-183.

SAVINGS ASSOCIATIONS —Cont'd
Confidentiality of information.
  Books and records, §81-12-77.
  Information acquired by commissioner, examiners or other employees of department, §81-12-17.
Conflicts of interest.
  Interest by commissioner, deputy commissioner and examiners in institutions, §81-12-17.
Conflicts of interest by director or officer.
  Disclosure, §81-12-87.
Conservator appointed by commissioner, §§81-12-181, 81-12-185.
Consolidation, §81-12-65.
Continuation of actions or proceedings instituted, §81-12-21.
Contributions to expense fund.
  Incorporators of mutual associations, §81-12-35.
Controlling interest in capital stock association, acquisition, §81-12-67.
Controlling stockholder in violation.
  Placement of voting stock in voting trust, §81-12-24.
Conversion not authorized by provisions prohibited, §81-12-63.
Conversion of associations into capital stock associations, §§81-12-57, 81-12-59.
Conversion of federal association into state-chartered association, §81-12-55.
Conversion of federal stock association into federal association, §81-12-61.
Conversion of mutual association into federal mutual savings association, §81-12-53.
Copies or reproductions of records.
  Photostatic, photographic or microfilming process, §81-12-111.
Correction of improper entries found on books and records.
  Commissioner requiring, §81-12-23.
Credits allowed in examination of association, §81-12-225.
Criminal penalty for violations generally, §81-12-207.
Cumulative fines and penalties, §81-12-223.
Data processing services maintaining records, §81-12-99.

SAVINGS ASSOCIATIONS —Cont'd
Deceased savings account holders.
  Payment to successors without administration, §81-12-143.
Default of board of directors.
  Failure to correct violation, §81-12-24.
Definitions, §81-12-3.
Deposit of association funds.
  Approval by director, §81-12-89.
Determination by commissioner final, §81-12-9.
Directors.
  Approval of deposit of association funds, §81-12-89.
  Bonding, §81-12-85.
  Capital stock associations, §81-12-83.
  Default for failure to comply with requirement of commissioner, §81-12-24.
  Fiduciary relationship, §81-12-87.
  Loans to, §81-12-87.
  Mutual associations, §81-12-81.
  Temporary order of removal, §81-12-24.
  Vacancy caused by removal.
    Appointment by commissioner to fill vacancy, §81-12-24.
Discontinuance of violation, order of commissioner, §81-12-179.
Dissolution.
  Termination of existence, §81-12-69.
Dividend upon common stock.
  Capital stock association declaring, §81-12-51.
Doing business as savings association without lawful authorization, §81-12-41.
Duties of department of banking and consumer finance, §81-12-11.
Earnings, declaring, §81-12-115.
Educational institutions savings plans, §81-12-129.
Enforcement of provisions of chapter by commissioner, §81-12-23.
Evaluation of banks by federal agencies.
  Public availability, §81-12-178.
Examination by commissioner, §81-12-177.
  Credits allowed, §81-12-225.
  Examination of banks generally, §§81-1-81 to 81-1-95.
Examination upon receipt by petition for certificate of incorporation, §81-12-27.

SAVINGS ASSOCIATIONS —Cont'd
Execution of laws relating to institutions.
  Carrying on savings and loan at business.
    Duties of department of banking and consumer finance, §81-12-11.
Existence as corporation, beginning, §81-12-33.
Expense fund.
  Creation by incorporators of mutual associations, §81-12-35.
Failure to commence business within time limit.
  Forfeiture of corporate existence, §81-12-45.
False and malicious statements as to association, §81-12-199.
Federal associations domiciled in state not deemed foreign corporations or associations, §81-12-191.
Federal capital stock savings associations.
  Conversion of capital stock association into federal association, §81-12-61.
Federal evaluation of banks, public availability, §81-12-178.
Federal home loan banks.
  Qualifying and becoming member of, §81-12-49.
Federal mutual savings associations.
  Conversion into state-chartered association, §81-12-55.
  Conversion of capital stock association into, §81-12-61.
  Conversion of state mutual savings association into, §81-12-53.
Fees.
  Department of banking and consumer finance, §81-12-193.
  Prohibited, §81-12-75.
Fidelity bond covering officers, attorneys, employees, agents and directors, §81-12-85.
Fiduciary.
  Directors and officers, §81-12-87.
  Savings association authorized to act as fiduciary, §81-27-1.101.
Filing certificate of approval and certificate of incorporation, §81-12-33.
Financial condition, complete statement to commissioner, §81-12-177.

SAVINGS ASSOCIATIONS —Cont'd
Fines and penalties.
  Cumulative, §81-12-223.
  Reimbursement, §81-12-221.
Fire and casualty insurance in connection with real estate loan.
  Borrower's choice, §81-12-163.
Foreign associations, §§81-12-187, 81-12-189.
Forfeiture of corporate existence.
  Failure to commence business within time limit, §81-12-45.
Hearing on petition for certificate of incorporation, §81-12-29.
Hearings by state board of banking review on incorporation, §81-12-31.
Holding company ownership, §81-12-66.
  Capital stock associations, §81-12-67.
Home office, change of location, §81-12-43.
Impairment of capital.
  Appointment of conservator, §81-12-181.
  Appointment of receiver, §81-12-183.
Incorporation generally, §81-12-25.
Indemnification of director, officer or employee, §81-12-91.
Inspection of books and records, §81-12-77.
Insurance in connection with real estate loans.
  Fire and casualty insurance, borrower's choice, §81-12-163.
  Title insurance, association requiring, §81-12-165.
Insured savings accounts and share accounts, §81-12-47.
Investments.
  Loans and other investments, §81-12-159.
  Real estate, limitations, §81-12-105.
  Securities, §§81-12-155, 81-12-157.
Issuance of stock.
  Capital stock associations, §81-12-51.
Joint accounts with right of survivorship, §81-12-137.
Late payment charges.
  Amount on delinquency, not considered interest under usury law, §81-12-167.
Liability for loans, §81-12-227.
Life, health and casualty insurance for officers and employees, §81-12-49.

SAVINGS ASSOCIATIONS —Cont'd

Limitation on loans, §81-12-227.

Liquidation of assets.
  Termination of association, §81-12-69.

Loan branch office.
  Establishment without authorization by commissioner, §81-12-176.

Loan processing office.
  Establishment without authorization by commissioner, §81-12-176.

Loans and investments, §81-12-159.
  Limitations, §81-12-227.
  Loans to officers and directors, §81-12-87.
  Records, §81-12-107.

Location of home office, changing, §81-12-43.

Loss on loan or investment.
  Operating business, managing or dealing in property to avoid, §81-12-173.

Management contracts, length requirements, approval by commissioner, §81-12-93.

Meeting of state board of banking review.
  Consideration of petition for certificate of incorporation, §81-12-31.

Meetings of members.
  Annual meeting, §81-12-71.

Meetings of stockholders.
  Annual meeting, §81-12-73.

Membership and stockholder records, §81-12-109.

Membership fees prohibited, §81-12-75.

Merger, §81-12-65.
  Fee for filing articles, §81-12-193.
  Supervisory merger into another association, §81-12-184.

Minimum required capital.
  Capital stock associations, §81-12-37.

Minutes of proceedings and meetings.
  Association to keep at home office, §81-12-95.

Mismanagement, misappropriation of funds, fraud, etc.
  Appointment of conservator, §81-12-181.
  Appointment of receiver by commissioner, §81-12-183.

Money orders, selling, §81-12-49.

Mortgages.
  Real estate loans generally, §§81-12-161 to 81-12-171.

SAVINGS ASSOCIATIONS —Cont'd

Mutual associations.
  Annual meeting of members, §81-12-71.
  Conversion into federal mutual savings association, §81-12-53.
  Conversion of federal association into state-chartered association, §81-12-55.
  Directors, §81-12-81.
  Organization, §81-12-35.
  Proxies, voting by at meetings, §81-12-71.
  Voting by members at meetings, §81-12-71.

Names, §81-12-41.
  Change of name, §81-12-43.
  Doing business under name without lawful authorization, §81-12-41.

Net worth adequacy of capital stock association.
  Determination by commissioner, §81-12-37.

Notaries public.
  Member or employee, §81-12-197.

Notice.
  Charges of unsafe or unsound practice or unfair and discriminatory practice, §81-12-211.
    Supervisory control by commissioner, §81-12-217.
  Petition for certificate of incorporation, §81-12-29.
  Proposed rules or regulations by commission.
    Publication, §81-12-7.
  Violations to board of directors, §81-12-24.

Number of persons to form mutual or capital stock association, §81-12-25.

Order of discontinuance of violation, §81-12-179.

Organizational meeting.
  Mutual associations, §81-12-35.

Overvaluation of assets on books.
  Charging off, §81-12-103.

Paid-in surplus requirement.
  Capital stock associations, §81-12-37.

Payment to successors without administration, §81-12-143.

Payroll savings plans, §81-12-131.

Personal interest of director or officer in business or transaction.
  Disclosure, §81-12-87.

SAVINGS ASSOCIATIONS —Cont'd
Petition for certificate of incorporation.
  Consideration by state board of banking review, §81-12-31.
  Examination and consideration by commissioner, §81-12-27.
  Filing with commissioner, §81-12-25.
  Hearing on petition, §81-12-29.
  Notice, §81-12-29.
Photostatting, photographing or microfilming records, §81-12-111.
Powers, §81-12-49.
Preferred or special stock.
  Issuance by capital stock association, §81-12-51.
Previously incorporated associations.
  Applicability of chapter to, enforceability of obligations, §81-12-203.
Private corporation laws, applicability, §81-12-4.
Proxies.
  Members of mutual association voting by, §81-12-71.
  Stockholders of capital stock association voting by, §81-12-73.
Publication of proposed rules or regulations by commissioner, §81-12-7.
Real estate appraisal upon purchase, §81-12-105.
Real estate investments, limitations, §81-12-105.
Real estate loans.
  Approved loan plans, written on, §81-12-161.
  Borrower's right to select and pay attorney, §§81-12-163, 81-12-165.
  Closing, disbursing, extending, readjusting or renewing loans.
    Payment of expenses by borrower, §81-12-165.
  Fire and casualty insurance.
    Borrower's right to obtain, §81-12-163.
  Late payment charges for delinquency, §81-12-167.
  Reinstatement of loan prior to foreclosure sale, §81-12-169.
  Successor in interest of real estate securing loan, right of association, §81-12-171.
  Title insurance, association requiring, §81-12-165.

SAVINGS ASSOCIATIONS —Cont'd
Real estate loans —Cont'd
  Written on approved loan plan, §81-12-161.
Receivers appointed by commissioner, §§81-12-183, 81-12-185.
Records.
  Branch office transactions, §81-12-97.
  Business transacted at home office, §81-12-95.
  Closing of books annually, §81-12-101.
  Copying or reproducing by photostatic, photographic or microfilming process, §81-12-111.
  Inspection of books and records, §81-12-77.
  Loan and investment records, §81-12-107.
  Maintenance by data processing services, §81-12-99.
  Membership and stockholder records, §81-12-109.
  Original record of transaction, agent to keep, §81-12-97.
Registered agent.
  Appointment as agent for receipt of process, notice or demand, §81-12-49.
Reimbursement to person of fine or penalty prohibited, §81-12-221.
Reinstatement of real estate loan prior to foreclosure sale, §81-12-169.
Reorganization, §81-12-65.
Reports, §81-12-177.
  Call reports, §81-12-79.
    Commissioner to furnish copy, §81-12-229.
Required capital.
  Capital stock associations, §81-12-37.
Reserves, §81-12-113.
Restrictions governing conduct of directors and officers, §81-12-87.
Return of association to directors after conservator appointed, §81-12-181.
Rights and powers of commissioner of banking and consumer finance, §81-12-7.
Rules and regulations, §81-12-7.
Savings accounts, §81-12-117.
  Accounts payable at death, §81-12-145.
  Additions to accounts, §81-12-115.
  Adverse claim to account, recognition, §81-12-127.

SAVINGS ASSOCIATIONS —Cont'd
Savings accounts —Cont'd
  Affidavit as to lost or destroyed account book or certificate, §81-12-123.
  Application for withdrawal, §81-12-151.
  Assessment, §81-12-115.
  Attorneys in fact.
    Authorization to make withdrawals, §81-12-133.
  Authority to accept, §81-12-49.
  Deceased nonresidents.
    Payment of account to executor or administrator, §81-12-141.
  Deceased savings account holders.
    Nonresidents, §81-12-141.
  Earnings.
    Declaring, §81-12-115.
    Payments on savings account, §81-12-149.
    Redemption on earnings by association, §81-12-153.
  Educational institutions, savings plans, §81-12-129.
  Evidence of ownership, §81-12-121.
  Execution of savings account contract, §81-12-119.
  Executors and administrators.
    Acceptance of accounts in name of, §81-12-139.
    Payment of accounts of deceased nonresidents to, §81-12-141.
  Fiduciaries.
    Acceptance of accounts in name of fiduciary, §81-12-139.
  Form of evidence of ownership, §81-12-121.
  Guardians.
    Acceptance of accounts in name of guardian, §81-12-139.
  Holder of account treated as owner, §81-12-117.
  Incompetent persons.
    Attorney in fact authorized to make withdrawals, revocation of authority, §81-12-133.
    Savings accounts issued to persons under disability, §81-12-135.
  Inducements to open, regulations by commissioner, §81-12-125.
  Insurance to protect accounts, §81-12-47.
  Joint accounts with right of survivorship, §81-12-137.

SAVINGS ASSOCIATIONS —Cont'd
Savings accounts —Cont'd
  Legal investment in account, §81-12-147.
  Losses, responsibility of members, §81-12-115.
  Lost or destroyed account book or certificate evidencing account, §81-12-123.
  Merchandise, things of value or services performed as inducement to opening, §81-12-125.
  Minors or other persons under disability, issuance to, §81-12-135.
  New account book or certificate.
    Lost or destroyed account book or certificate, §81-12-123.
  Notice of adverse claim to account, §81-12-127.
  Offering and sale exempt from securities regulation, §81-12-195.
  Opening and holding solely and absolutely in own right, §81-12-117.
  Parents or guardians of minors with savings account at institution.
    Powers as to withdrawal, §81-12-135.
  Payable on death accounts, §81-12-145.
  Payment of earnings on savings account, §81-12-149.
  Payroll savings plans, §81-12-131.
  POD accounts, §81-12-145.
  Preferences, §81-12-115.
  Redemption on earnings, §81-12-153.
  Representation by account of savings account holder on books of association, §81-12-117.
  Right to inspect books and records, §81-12-77.
  Savings liability, §81-12-115.
  Securities regulation exemption.
    Offering and sale of accounts, §81-12-195.
  Trustees.
    Acceptance of accounts in name of trustee, §81-12-139.
  Trust or other fiduciary capacity, opening and holding in, §81-12-117.
  Two or more persons, accounts in name of, §81-12-137.
  Withdrawals, §81-12-151.
    Attorney in fact authorization to make withdrawals, §81-12-133.

SAVINGS ASSOCIATIONS —Cont'd
Savings branch office.
  Establishment without authorization by commissioner, §81-12-176.
Savings liability, §81-12-115.
Savings plans at educational institutions, §81-12-129.
Secretary of state.
  Certificate of approval and certificate of incorporation.
    Filing with secretary by commissioner of banking and consumer finance, §81-12-33.
Securities in which association may invest, §§81-12-155, 81-12-157.
Separate reserve account, §81-12-113.
Service of loans and investments for others, §81-12-49.
Share accounts.
  Insurance to protect accounts, §81-12-47.
Standards of conduct for officers or directors, §81-12-87.
Subscription by incorporators.
  Organization of mutual associations, §81-12-35.
Successor in interest of real estate securing loan.
  Right of association, §81-12-171.
Successors without administration.
  Payment to, §81-12-143.
Supervision over associations by commissioner, §81-12-23.
Supervisory control by commissioner for unsafe or unsound practice, §81-12-217.
Supervisory merger into another association, §81-12-184.
Temporary order of removal of officers and directors, §81-12-24.
Termination of existence, §81-12-69.
Title insurance in connection with real estate loan.
  Association requiring, §81-12-165.
Title of chapter, §81-12-1.
Transfer of books and records, §81-12-21.
Traveler's checks, selling, §81-12-49.
Trust business generally, §§81-27-1.001 to 81-27-8.131.
Trust created for paying burial or cemetery expenses.
  Acting as trustee for, §81-12-49.
Unsafe or unsound practice or unfair and discriminatory practice.
  Notice of charges, hearing, §81-12-211.

SAVINGS ASSOCIATIONS —Cont'd
Unsafe or unsound practice or unfair and discriminatory practice —Cont'd
  Supervisory control by commissioner, §81-12-217.
Untrue facts and false and malicious statements as to association, §81-12-199.
Voting by members.
  Mutual associations, §81-12-71.

SAVINGS BANKS, §§81-14-1 to 81-14-403.
Accepting own capital stock or mutual capital certificates as security, §81-14-305.
Access of commissioner to books and records, §81-14-161.
Accounting principles, §81-14-351.
Accounts as deposit of securities, §81-14-371.
Accounts payable at death, §81-14-363.
Adequate net worth requirement, §81-14-355.
Adverse claims to account, §81-14-379.
Amendments to certificate of incorporation, §81-14-79.
Amendments to charter or bylaws, §81-14-257.
Amendment to certificate of incorporation, §81-14-79.
Annual meeting of members.
  Notice required, §81-14-261.
Annual supervisory fee and fees for various activities, §81-14-157.
Appeal from final rule, regulation or order of commissioner, §81-14-175.
Applicability of provisions, §81-14-5.
Application to organize, §81-14-57.
  Appeal of final decision by applicant, §81-14-69.
  Approval or denial, §81-14-67.
  Consideration by commissioner, §81-14-61.
    Criteria to be met for approval, §81-14-63.
  Grounds for approval or denial, §81-14-67.
  Interim state savings banks, §81-14-129.
  Recommendations of commissioner, consideration, §81-14-65.

SAVINGS BANKS —Cont'd
Appraisal of real estate and other collateral securing loan.
  Test appraisals, §81-14-163.
Assessments for maintenance of department.
  Subject to, §81-3-3.
Attorney selection, notice to borrow prior to loan commitment, §81-14-307.
Audit annually, §81-14-171.
Bad debt reserve.
  Qualification for and maintain eligibility for, §81-14-73.
Bank defined as including savings bank, §81-3-1.
Blanket indemnity bond, §81-14-267.
Board of directors.
  Loans to, §81-14-313.
  Mutual savings banks, §81-14-253.
Bonding, §81-14-267.
Bonds or other evidences of indebtedness, investments in, §81-14-303.
Borrowing money, limitation, §81-14-387.
Branch offices, §81-14-83.
  Changing location, request, §81-14-85.
  Closing by order of commissioner, §81-14-87.
  Discontinuance or abandonment, consent of commissioner, §81-14-89.
Business corporation law, applicability, §81-14-53.
Bylaws.
  Amendments, §81-14-257.
Call reports, §81-14-169.
  Copy provided by commissioner, §81-14-179.
Cash and regularly marketable investments, amount to be maintained, §81-14-353.
Cease and desist orders, §81-14-201.
  Civil penalties for directors, officers or employees violation, §81-14-205.
  Civil penalties for savings banks violation, §81-14-203.
Certificate of approval for change in control, §81-14-403.
Certificate of incorporation, §81-14-59.
  Amendment, §81-14-79.
Change of control.
  Application to commissioner for certificate of approval, §81-14-403.

SAVINGS BANKS —Cont'd
Changing location of branch or principal office, request, §81-14-85.
Charges of unsafe or unsound practice.
  Notice of charges, §81-14-207.
  Removal of directors, officers and employees, §81-14-209.
Check refused by payor depository institution.
  Processing fee for returned check, §81-14-365.
Claims against liquidated savings banks.
  Priority for payment, §81-14-211.
Collateral securing loans, test appraisals, §81-14-163.
Collection agents, bond, §81-14-267.
Commencement of business, time allowed, §81-14-75.
Conduct of directors and officers, §81-14-255.
Conduct of hearings required to be held, §81-14-51.
Confidential records or information, §81-14-167.
Conflicting business transactions.
  Officers and directors, §81-14-255.
Conflicts of interest of commissioner and department employees, §81-14-165.
Consideration by commissioner of application to organize and establish, §81-14-61.
  Criteria to be met for approval, §81-14-63.
Consolidation.
  Supervisory consolidation ordered by commissioner, §81-14-127.
Conversion.
  From state to federal charter, §81-14-103.
  Mutual to stock savings bank, §81-14-107.
  Simultaneous charter and ownership conversion, §81-14-105.
  Stock savings bank to mutual savings bank, §81-14-109.
  Supervisory conversion or combination mergers and conversions ordered by commissioner, §81-14-127.
  To savings bank, §81-14-101.
Copying or reproducing records by photographic, photostatic or other process, §81-14-153.

SAVINGS BANKS —Cont'd

Credit in excess of sound value for note or security.
  Allowance in examination, §81-14-177.

Cumulative nature of remedies, §81-14-217.

Deceased account holders.
  Payment to successors without administration, §81-14-383.

Deceased savings account holders.
  Payment of accounts of deceased nonresidents, §81-14-381.

Defamation of bank, §81-14-173.

Definitions, §81-14-7.

Disposal of prohibited right or interest in bank by commissioner or employee of department, §81-14-165.

Dissolution.
  Involuntary dissolution, §81-14-211.
  Voluntary dissolution by stockholders or members, §§81-14-121, 81-14-123.

Dividends.
  Stock dividends, §81-14-125.

Drawn on bank with insufficient funds.
  Processing fee for returned checks, §81-14-365.

Educational loans, §81-14-301.

Election of directors by members.
  Mutual savings banks, §81-14-253.

Emergency limitations.
  Powers of Commissioner, §81-14-219.

Entitlement to payment of licensing fee, §81-14-77.

Examination of witnesses by commissioner, §81-14-161.

Examinations by commissioner, §81-14-155.
  Access to books and records, subpoenas, administrative oaths, examination of witnesses, §81-14-161.
  Credit allowed, §81-14-177.
  Examination of banks generally, §§81-1-81 to 81-1-95.
  Extended audit, examination or reevaluation.
    Failure to disclose complete financial condition of bank, §81-14-159.

Executive officers.
  Loans to, §81-14-313.

Executors and administrators.
  Acceptance of accounts in name of administrator or executor, powers of fiduciary, §81-14-361.

SAVINGS BANKS —Cont'd

Executors and administrators —Cont'd
  Payment of accounts of deceased nonresidents, §81-14-381.

Expenses in connection with loans, payment, §81-14-309.

False information and advertising with respect to bank business, §81-14-173.

False statements in regard to books, accounts or papers, §81-14-155.

Family credits, financing, §81-14-301.

Federal reserve banks.
  Authority to join, §81-14-389.

Fiduciaries.
  Acceptance of accounts in name of fiduciary, powers of fiduciary, §81-14-361.
  Directors and officers, §81-14-255.

Fines and penalties.
  Civil penalty for directors, officers or employees violation of provisions, §81-14-205.
  Civil penalty for savings bank violation of provisions, §81-14-203.

Fraudulent, illegal or unsafe practice.
  Takeover by commissioner, §81-14-211.

General parity provision, §81-14-321.

General provisions relating to banks and banking, §§81-5-1 to 81-5-105.

Guardians.
  Acceptance of accounts in name of guardian, powers of fiduciary, §81-14-361.

Hearings required to be held by chapter, conduct generally, §81-14-51.

Holding companies, §81-14-401.

Impaired capital.
  Takeover by commissioner, §81-14-211.

Incorporation and organization of banks generally, §§81-3-1 to 81-3-17.

Indemnification.
  Prohibited, §81-14-215.

Injunctions to restrain person from violating provisions, §81-14-55.

Insider loans, §81-14-313.

Insolvency.
  Takeover by commissioner, §81-14-211.

Insurance on members' and customers' deposit accounts, §81-14-71.

SAVINGS BANKS —Cont'd
Interim state savings banks.
  Application for permission to organize, §81-14-129.
Investment and loans, §§81-14-301, 81-14-303.
Involuntary dissolution, §81-14-211.
IRS qualified thrift institution.
  Qualifying for and maintaining eligibility, §81-14-73.
Joint accounts with right of survivorship, §81-14-359.
Late payment charges, §81-14-309.
Legal investments, savings accounts as, §81-14-385.
Letters of credit.
  Issuance, §81-14-301.
Licensing generally, §81-14-77.
Limitation on loans to directors or executive officers, §81-14-313.
Limitation on loans to one borrower, §81-14-319.
Limitation on power to borrow money, §81-14-387.
Liquidation.
  Involuntary liquidation, §81-14-211.
Liquidity requirement, §81-14-353.
List of stockholders, §81-14-81.
Loan production office, §81-14-91.
Loans.
  Borrower contract with specific person or organization.
    Prohibited, §81-14-307.
  Directors or executive officers, §81-14-313.
  Expense and fees, §81-14-309.
  Granted to commissioner or department employees, §81-14-165.
  Loans or investments in violation of chapter, §81-14-317.
  Loans to one borrower, limitation, §81-14-319.
  Repayments, methods, §81-14-311.
  Secured by banks own capital stock or mutual capital certificates.
    Prohibition, §81-14-305.
  Specific loan information.
    Use by person other than lender, §§81-29-1, 81-29-3.
  Subjects of, requirements, §81-14-301.
Meeting of members or stockholders.
  Annual meetings, notice required, §81-14-261.

SAVINGS BANKS —Cont'd
Meeting of members or stockholders —Cont'd
  Quorum, §81-14-265.
  Special meetings, notice required, §81-14-263.
Merger.
  Federal charters with state savings banks, §81-14-119.
  Like savings banks, §81-14-111.
  Merger-conversion or simultaneous merger-conversion, §§81-14-113, 81-14-117.
  Mutual and stock savings bank, §81-14-115.
  Supervisory merger or combination of merger and conversion ordered by commissioner, §81-14-127.
Minors, issuance of savings accounts, §81-14-369.
Mobile home financing, §81-14-301.
Mutual banks.
  Conversion of stock savings bank to mutual savings bank, §81-14-109.
  Conversion to stock savings bank, §81-14-107.
Mutual savings banks.
  Membership, §81-14-251.
  Merger of like savings banks, §81-14-111.
  Merger of mutual and stock savings banks, §81-14-115.
  Notice requirement for annual meeting of members, §81-14-261.
Names.
  SSB used in legal name, §81-14-55.
Net worth maintenance requirement, §81-14-355.
Notice.
  Annual meetings, §81-14-261.
  Charges of unsafe or unsound practice, §81-14-207.
    Removal of directors, officers and employees, §81-14-209.
  Right of setoff exercised, §81-14-367.
  Special meeting, §81-14-263.
Number of persons that may organize, §81-14-57.
Organization generally, §81-14-57.
Ownership by holding company, §81-14-401.
Payable on death accounts, §81-14-363.
Payment on loans or investments in violations of chapter, §81-14-317.

SAVINGS BANKS —Cont'd
Payment to successors of deceased account holders without administration, §81-14-383.
Persons under disability, issuance of savings accounts to, §81-14-369.
POD accounts, §81-14-363.
Power of attorney.
  Recognition by savings bank of authority of individual holding, §81-14-377.
Powers of commissioner as to banks organized or operated under provisions, §81-14-151.
Preliminary application to organize, §81-14-57.
Processing fee for returned checks, §81-14-365.
Production of records, books, papers, etc.
  Power of commissioner to require, §81-14-161.
Prohibited right or interest in bank by commissioner or employee of department, §81-14-165.
Proxies.
  Exercise of voting rights and affairs by, §81-14-259.
  Voluntary dissolution by stockholders or members.
    Voting by proxy, §81-14-121.
Purposes of chapter, §81-14-3.
Quorum requirement at meetings, §81-14-265.
Real estate, loans on security of, §81-14-301.
Receipt of deposits, powers, §81-14-357.
Receivers.
  Appointment by commissioner, §81-14-211.
Recognition of adverse claim to account, §81-14-379.
Records.
  Confidential information, §81-14-167.
  Copying or reproducing by photographic, photostatic or other process, §81-14-153.
Refusal to exhibit to commissioner books, accounts or papers, §81-14-155.
Removal of directors, officers and employees, §81-14-209.
Repayment of loans, methods, §81-14-311.

SAVINGS BANKS —Cont'd
Reports.
  Call reports, §81-14-169.
    Copy provided by commissioner, §81-14-179.
Rights in deposit account, transfer, §81-14-375.
Rules and regulations promulgated by commissioner, §81-14-153.
  Loans permitted to be made, §81-14-315.
Saving bank law, §81-14-1.
Savings accounts issued to minors or persons under disability, §81-14-369.
Savings liability.
  Borrowing money on, §81-14-387.
Scope of provisions, §81-14-55.
Securities, investments in, §81-14-303.
Securities required to be deposited with agency, department or official.
  Deposit accounts as deposit of securities, §81-14-371.
Seizure of books, records and assets by commissioner, §81-14-211.
Setoff on deposit account, §81-14-367.
Solicitation of deposits, §81-14-357.
Special meetings of members or stockholders, §81-14-263.
Standards of conduct for directors and officers, §81-14-255.
State board of banking review's review of findings and recommendations of commissioner, §81-14-65.
Stock dividends, §81-14-125.
Stockholders.
  List to be maintained, §81-14-81.
  Meetings, §§81-14-261, 81-14-263, 81-14-265.
Stock savings banks.
  Conversion of mutual to stock savings bank, §81-14-107.
  Conversion of stock savings bank to mutual savings bank, §81-14-109.
  Merger of like savings banks, §81-14-111.
  Merger of mutual and stock savings banks, §81-14-115.
  Notice requirement for annual meeting, §81-14-261.
Subpoena duces tecum, issuance by commissioner, §81-14-161.

SAVINGS BANKS —Cont'd
Subpoenas, power of commissioner to issue, §81-14-161.
Supervision by department.
  Subject to, §81-3-3.
Supervisory control by commissioner.
  Notice of charges of unsafe or unsound practice, §81-14-207.
Supervisory fee and fees for other activities, §81-14-157.
Supervisory mergers, consolidations, conversions or combinations ordered by commissioner, §81-14-127.
Takeover by commissioner of books, records and assets, §81-14-211.
Temporary order of removal of director, officer or employee, §81-14-209.
Test appraisal of real estate and other collateral securing loans, §81-14-163.
Thrift institution rights and powers, banks to possess, §81-14-321.
Time allowed for commencing business, §81-14-75.
Trademark or trade name.
  Use by person other than owner, §§81-29-1, 81-29-3.
Transfer of rights in deposit account, §81-14-375.
Trustees.
  Acceptance of accounts in name of trustee, powers of trustee, §81-14-361.
Unauthorized operation as savings bank, §81-14-55.
Unauthorized use of term savings bank, §81-14-55.
Unsafe or unsound practices.
  Removal of directors, officers and employees, §81-14-209.
  Supervisory control by commissioner, §81-14-207.
  Takeover by commissioner, §81-14-211.
Voluntary dissolution by stockholders or members, §§81-14-121, 81-14-123.
Voting rights and affairs of bank, §81-14-259.
Withdrawal of deposits.
  Rules and regulations promulgated by commissioner, §81-5-1.

SAVINGS INSTITUTION BOARD.
Abolished, transfer of functions, §81-12-6.

SAVINGS INSTITUTIONS DEPARTMENT.
Abolished, transfer of functions, §81-12-6.

SCHOOLS AND EDUCATION.
Savings plans at educational institutions.
  Contracts with savings associations, §81-12-129.

SEALS AND SEALED INSTRUMENTS.
Department of banking and consumer finance, §81-1-73.

SECRETARY OF STATE.
Savings associations.
  Certificate of approval and certificate of incorporation.
    Filing with secretary by commissioner of banking and consumer finance, §81-12-33.

SERVICE OF NOTICE, PROCESS AND OTHER PAPERS.
Bank examinations.
  Subpoenas issued by commissioner or examiner, §81-1-85.
Examination of banks.
  Subpoenas issued by commissioner or examiner, §81-1-85.
International banking, §81-25-135.
  Appointment of commissioner as agent, representative and attorney, §81-25-133.
Trust companies.
  Executive officer at principal office.
    Agent for service, §81-27-2.003.

SETOFFS AND RECOUPMENT.
Savings banks.
  Right of setoff on deposit account, §81-14-367.

SHOW CAUSE ORDERS.
International banking.
  Authority of commissioner to seize property, §81-25-171.
Trust companies, dissolution, §81-27-8.106.

SIGNS.
Mortgage brokers, lenders, loan originators.
  Signage at principal place of business, §81-18-25.

SMALL BUSINESS INVESTMENT COMPANIES.
Banking corporation investing in stock, §81-5-25.

SMALL LOANS.
Authority of bank or trust company, §81-5-79.
Loan number, loan amount, other specific loan information.
  Use by person other than lender, §§81-29-1, 81-29-3.
Trademark or trade name.
  Use by person other than owner or lender, §§81-29-1, 81-29-3.

STATE BOARD OF BANKING REVIEW, §§81-3-12, 81-3-13.
Savings associations.
  Generally, §§81-12-1 to 81-12-229.

STATE COMPTROLLER.
Bank to report accounts of deceased depositors to, §81-5-65.

STATE DEPARTMENTS AND AGENCIES.
Banking and consumer finance department, §§81-1-57 to 81-1-137.

STATE TRUST INSTITUTION CHARTER MODERNIZATION ACT.
Generally, §§81-27-3.001 to 81-27-5.402.

STOCK AND STOCKHOLDERS.
Dissenters' rights.
  Trust company mergers, §81-27-6.404.
Savings associations.
  Issuance of stock by capital stock association, §81-12-51.

STOCK SAVINGS ASSOCIATIONS.
Generally, §§81-12-1 to 81-12-229.

STOCK SAVINGS BANKS.
Conversion of mutual to stock savings bank, §81-14-107.
Conversion to mutual savings bank, §81-14-109.
Merger, §§81-14-111 to 81-14-119.
Notice requirement for annual meeting, §81-14-261.
Savings banks generally, §§81-14-1 to 81-14-403.

SUBPOENAS.
Bank examinations, §81-1-85.

SUBPOENAS —Cont'd
Credit unions examined by commissioner of banking and consumer finance.
  Power of commissioner to issue, §81-13-17.
Department of banking and consumer finance.
  Commissioner or examiner issuing, §81-1-85.
Examination of banks, §81-1-85.
International banking.
  Reports subject to, §81-25-151.
Mortgage brokers, lenders, loan originators.
  Noncompliance, issuance, §81-18-40.
Savings banks.
  Power of commissioner to issue, §81-14-161.

SUBPOENAS DUCES TECUM.
Savings banks.
  Power of commissioner to issue, §81-14-161.

SURVIVORSHIP.
Joint bank accounts with right of survivorship, §81-5-63.
  Savings banks, §81-14-359.
Joint savings accounts at savings institutions, §81-12-137.

T

TAXATION.
Credit unions, §81-13-63.

TAX EXEMPTIONS.
Agricultural credit corporations.
  Loaned money, §81-15-29.
Credit unions.
  Capital, reserves, surpluses and other funds and income, §81-13-63.
Farmers' credit associations, §81-17-25.

THRIFT INSTITUTIONS.
Savings associations law generally, §§81-12-1 to 81-12-229.
Savings banks generally, §§81-14-1 to 81-14-403.

TIME.
Mortgage brokers, lenders, loan originators.
  Annual report, §81-18-23.

TIME —Cont'd
Mortgage brokers, lenders, loan originators —Cont'd
  Change of address of business location.
    Notification, §81-18-17.
  Events requiring report, §81-18-23.
  Judgment recovered against company.
    Failure to pay nonappealable final judgment.
      Revocation or suspension of license or registration, §81-18-37.
  Loan payoff.
    Refusal to provide within three days, §81-18-27.
  Notification of action involving owner or principal, §81-18-23.
  Release of originator from employment.
    Notification, §81-18-17.
  Revocation or suspension of license or registration.
    Request for hearing, §81-18-37.

TITLE INSURANCE.
Real estate loans invested in by savings association.
  Association requiring, §81-12-165.

TRADEMARKS.
Lender's trademark.
  Lender defined, §81-29-1.
  Use by other than owner of mark or lender, §81-29-3.

TRADE NAMES.
Lender's trade name.
  Lender defined, §81-29-1.
  Use by other than owner of mark or lender, §81-29-3.

TRANSFER-ON-DEATH SECURITY ACCOUNTS.
Establishment by bank, §81-5-62.
Savings accounts at savings institutions, §81-12-145.
Savings banks, §81-14-363.

TRUST COMPANIES, §§81-27-1.001 to 81-27-8.131.
Acquiring real estate, §81-27-5.002.
Acquisition of control of state trust company through change in legal or beneficial interest in voting securities, §81-27-6.101.
  Appeals, §81-27-6.104.
  Application, §81-27-6.102.
  Civil action, enforcement, §81-27-6.106.

TRUST COMPANIES —Cont'd
Acquisition of control of state trust company through change in legal or beneficial interest in voting securities —Cont'd
  Failure or refusal to file application, criminal penalty, §81-27-6.106.
  Hearing, §81-27-6.103.
  Objection to transfer, §81-27-6.105.
Acquisition of own shares or participation shares, §81-27-5.102.
Activities not requiring charter, license or registration, §81-27-1.102.
Administrative orders.
  Examination of witnesses, §81-27-7.103.
  Notice and opportunity for hearing, §81-27-7.102.
  Powers of commissioner, §81-27-7.101.
  Removal of directors, officers and employees, §81-27-7.104.
  Review of orders by court, §81-27-7.105.
  Subpoenas issued by commissioner, §81-27-7.103.
Affiliates.
  Transacting business with, §81-27-6.207.
  Trustee or fiduciary hiring and compensating as delegate, §81-27-3.202.
Amendment of state trust company articles of association, §81-27-4.201.
Appeals.
  Chartering, §81-27-4.103.
  Commissioner's orders.
    Administrative orders and civil penalties, §81-27-7.105.
    Final decision, §81-27-4.108.
Applicability of business corporation act, §81-27-4.107.
Articles of association of state trust company, §81-27-4.102.
  Amendment, §81-27-4.201.
Articles of incorporation.
  Filing proposed articles with commissioner, §81-27-4.103.
Assessments for maintenance of department.
  Subject to, §81-3-3.
Assets, sale of, §§81-27-6.405 to 81-27-6.408.

TRUST COMPANIES —Cont'd
Assets of another trust institution, purchase, §81-27-3.401.
Bank defined as including trust company, §81-3-1.
Banks and banking generally, §§81-5-1 to 81-5-105.
Board of directors, §81-27-6.203.
  Committee designated to perform duties, §81-27-6.204.
  Fiduciary responsibility, §81-27-6.208.
  Regular meetings, required, §81-27-6.204.
Bonding of directors, managers, managing participants, etc., §81-27-6.210.
Borrowing limits, §81-27-5.401.
Branch trust offices, §81-27-2.002.
  Business at branch, §81-27-2.101.
Business corporation act, applicability, §81-27-4.107.
Business corporation powers.
  State trust company exercising, §81-27-4.101.
Buying, selling or otherwise dealing in goods.
  Investment of funds in, §81-27-5.105.
Bylaws, §81-27-6.202.
Capital notes or debentures, issuance, §81-27-4.204.
Capital requirement, §81-27-4.106.
Cease and desist orders.
  Civil penalty for violating, §81-27-7.101.
  Notice and opportunity for hearing, §81-27-7.102.
  Power of commissioner, §81-27-7.101.
Certificate of authority to incorporate, §81-27-4.103.
Certificate of incorporation, §81-27-4.103.
Change in control.
  Out-of-state trust institutions, notice, §81-27-2.303.
Changing location of principal office, §81-27-2.003.
Changing outstanding capital, approval required, §81-27-4.203.
Charter, issuance, §81-27-4.105.
  Activities not requiring, §81-27-1.102.
Choice of law governing.
  Fiduciary investment standards, §81-27-3.103.
  Written agreement between trust institution and client, §81-27-3.102.

TRUST COMPANIES —Cont'd
Claims against dissolved companies, §§81-27-8.110 to 81-27-8.112.
Commissioner taking charge of business and property.
  Involuntary dissolution and liquidation, §§81-27-8.101 to 81-27-8.131.
Common trust funds, investment, §81-27-5.302.
Companies authorized to act as fiduciary, §81-27-1.101.
Concealment of information or fact, §81-27-6.206.
Conflicts of interest, §81-27-6.207.
  Compensation arrangement between client and person acting as trustee or other fiduciary, §81-27-3.301.
  Disclosure of potential conflicts, §81-27-3.302.
  Limited liability trust companies, §81-27-6.306.
Consolidation.
  Out-of-state trust institutions, notice, §81-27-2.303.
Contributions to community funds or charitable institutions, §81-27-4.101.
Control acquisition of state trust company.
  Change in legal or beneficial interest in voting securities, §81-27-6.101.
    Appeals, §81-27-6.104.
    Application, §81-27-6.102.
    Civil action by commissioner, §81-27-6.106.
    Failure or refusal to file application, §81-27-6.106.
    Hearing and decision, §81-27-6.103.
    Objection, §81-27-6.105.
Conversion of capital notes or debentures into shares or participation shares, §81-27-4.204.
Conversion of private trust company to public trust company, §81-27-4.303.
Criminal offenses by officers or directors, §81-27-6.206.
Deed of trust, trustee under.
  Activity not requiring charter, license or registration, §81-27-1.102.
Definitions, §81-27-1.002.
  Additional definitions, §81-27-6.001.
  Private trust companies, §81-27-4.301.

TRUST COMPANIES —Cont'd
Definitions —Cont'd
  State trust company facility.
    Investment in by state trust company, §81-27-5.001.
  State trust institution charter modernization act, §81-27-3.002.
Delegation of functions.
  Hiring and compensating affiliate as delegate, §81-27-3.202.
  Trustee or other fiduciary under laws of state, §81-27-3.201.
Department of banking and consumer finance.
  Supervision of commissioner, §81-27-7.003.
Deposit of trust funds with itself or affiliate, §81-27-4.101.
Designation of trust institution as fiduciary for person, §81-27-3.101.
Disbursing agents.
  Authority of purchasing trust institution to act as, §81-27-6.405.
Disclosure of potential conflicts of interest, §81-27-3.302.
Dishonest, incompetent or reckless management.
  Removal of officer, director or employee, §81-27-7.104.
Dissenters to mergers, rights, §81-27-6.404.
Dissolution and liquidation.
  Claims against dissolved companies, §§81-27-8.110 to 81-27-8.112.
  Voluntary dissolution and liquidation, §§81-27-8.001 to 81-27-8.006.
    Affirmative vote of shareholders or participants, §81-27-8.001.
    Election to liquidate at shareholders' or participants' meeting, §81-27-8.002.
    Examination by commissioner, §81-27-8.004.
    Meeting of shareholders or participants, action to liquidate taken at, §81-27-8.002.
    Notice of closing and liquidation of affairs, §81-27-8.003.
    Permit to liquidate, §81-27-8.002.
    Publication of notice of liquidation, §81-27-8.003.
    Reports furnished commissioner, §81-27-8.004.
    Sale or transfer of property to other trust institutions, §81-27-8.006.

TRUST COMPANIES —Cont'd
Dissolution and liquidation —Cont'd
  Voluntary dissolution and liquidation —Cont'd
    Unclaimed property, §81-27-8.005.
    Vote of shareholders or participants, §81-27-8.001.
Dividends.
  Involuntary dissolution and liquidation.
    Declaration of dividends to shareholders and participants, §81-27-8.113.
    Unclaimed dividends held in trust, §81-27-8.116.
Examination by commissioner, §81-27-7.001.
  Assessment of fees, §81-27-7.002.
  Examination of banks generally, §§81-1-81 to 81-1-95.
  Voluntary liquidation of affairs, §81-27-8.004.
Examination of witnesses by commissioner, §81-27-7.103.
Executive officers.
  Agent for service of process, §81-27-2.003.
  Principal executive officer, §81-27-6.205.
Exemptions from charter, licensing or registration requirements, §81-27-1.102.
Existence of viable market or service by proposed new trust company.
  Investigation by commissioner, §81-27-4.104.
Facilities of state trust company.
  Investment in by trust company, approval of commissioner, §81-27-5.001.
False entries in books or records, §81-27-6.206.
Federal home loan banks.
  Investment in securities issued by, §81-27-5.101.
Fee assessment for examination, §81-27-7.002.
Fidelity bond of officer and employee, §81-5-15.
Fiduciary delegating investment, management or administrative functions, §81-27-3.201.
  Hiring and compensating affiliate, §81-27-3.302.

TRUST COMPANIES —Cont'd
Fiduciary records kept separate and distinct from company records, §81-27-6.209.
Fiduciary responsibility of board of directors, §81-27-6.208.
Hearings by commissioner generally, §81-27-4.108.
Impairment of capital.
  Involuntary dissolution and liquidation, §§81-27-8.101 to 81-27-8.131.
Incorporation and organization of banks generally, §§81-3-1 to 81-3-17.
Increasing outstanding capital, approval required, §81-27-4.203.
Indenture, deed of trust or other instrument of like character.
  Insolvency of trust company appointed as trustee.
    All instruments, petition and order applicable to, §81-27-8.129.
    Appointment of new trustee where no objection made, §81-27-8.126.
    Hearing upon objection to appointment of new trustee, §81-27-8.127.
    Petition for new trustee, §81-27-8.124.
    Publication and notice of petition for new trustee, §81-27-8.125.
    Registration of final order of appointment of new trustee, §81-27-8.128.
    Remedy in addition to and not substitution for other remedy at law, §81-27-8.130.
    Trust terminated, §81-27-8.123.
Insolvency.
  Involuntary dissolution and liquidation, §§81-27-8.101 to 81-27-8.131.
  Trustee in indenture or deed of trust, new trustee, §§81-27-8.123 to 81-27-8.130.
    Appointment where no objection made, §81-27-8.126.
    Hearing upon objection, §81-27-8.127.
    Petition for, §81-27-8.124.
      Applicability, §81-27-8.129.
    Publication and notice, §81-27-8.125.
    Registration of final order or appointment, §81-27-8.128.

TRUST COMPANIES —Cont'd
Insolvency —Cont'd
  Trustee in indenture or deed of trust, new trustee —Cont'd
    Remedy additional to and not substitution for other remedy, §81-27-8.130.
    Trust terminated, §81-27-8.123.
  Voluntary dissolution and liquidation, §§81-27-8.001 to 81-27-8.006.
Installment loans not exceeding five thousand dollars, §81-5-79.
Interest on loans not exceeding five thousand dollars, §81-5-79.
Interstate trust offices.
  Acquisition by out-of-state trust institution, §81-27-2.103.
  Approval of establishment by out-of-state trust institution, §81-27-2.105.
  Establishment by out-of-state trust institution, §81-27-2.102.
    Additional trust offices, §81-27-2.106.
  Notice required, §81-27-2.104.
Investigations.
  Chartering of new trust company, §81-27-4.103.
  Viability of market for proposed state trust company, §81-27-4.104.
Investments by state trust companies.
  Buying, selling or otherwise dealing in goods, prohibition, §81-27-5.105.
  Mutual funds, §81-27-5.104.
  Securities, §81-27-5.101.
  Share or participation share transactions, §81-27-5.102.
  State trust company facilities, approval of commissioner required, §81-27-5.001.
  Subsidiaries, §81-27-5.103.
  Trust deposits, §81-27-5.301.
Investment securities, investments in, §81-27-5.101.
Involuntary dissolution and liquidation, §§81-27-8.101 to 81-27-8.131.
Issuance of charter to new trust company, §81-27-4.105.
Joint and several liability.
  Approving loan in violation of provisions, §81-27-5.201.
Lease financing transactions.
  Conflicts of interest, §81-27-6.207.

TRUST COMPANIES —Cont'd
Lease financing transactions —Cont'd
  Tangible personal property, §81-27-5.202.
Licenses.
  Activities not requiring, §81-27-1.102.
Limitation on liabilities outstanding, §81-27-5.401.
Limited liability trust companies, §§81-27-6.301 to 81-27-6.310.
  Additional participants, §81-27-6.306.
  Allocation of profits and losses, §81-27-6.308.
  Amendment of articles of association, §81-27-4.201.
  Board of managers, election, §81-27-6.304.
  Conflicts of interest, §81-27-6.306.
  Construction of provisions, §81-27-6.310.
  Contracting debts and obligations, §81-27-6.303.
  Dissolution, §81-27-6.307.
  Distributions of cash or other assets, §81-27-6.309.
  Full liability participant, notice, §81-27-6.301.
  Interest in company personal estate of participant, §81-27-6.306.
  Involuntary dissolution and liquidation, §§81-27-8.101 to 81-27-8.131.
    Agent authorized to receive remaining assets after payment of claims, §81-27-8.117.
    Annual report of commissioner.
      List of companies taken over and liquidated, §81-27-8.118.
    Answer by trust company to notice of takeover, §81-27-8.106.
    Appeal of takeover by commissioner, §81-27-8.106.
    Assignments for benefit of creditors prohibited, §81-27-8.102.
    Attorneys, accountants and clerks, employment by commissioner, §81-27-8.115.
    Bonding of commissioner, §81-27-8.108.
    Books, papers and records of liquidated company, disposition, §81-27-8.121.
      Destruction, §81-27-8.122.
    Claims against dissolved company.
      List of claims presented and deposits, §81-27-8.112.

TRUST COMPANIES —Cont'd
Limited liability trust companies —Cont'd
  Involuntary dissolution and liquidation —Cont'd
    Claims against dissolved company —Cont'd
      Notice and time for filing, §81-27-8.110.
      Objections to claims rejected, §81-27-8.111.
      Presentation of claim after expiration of time fixed for presenting, §81-27-8.112.
      Rejection of claims, §81-27-8.111.
      Service of notice of rejection of claims, §81-27-8.111.
    Collection of debts and claims, §81-27-8.107.
    Compensation of commissioner, §81-27-8.119.
    Deposit of funds collected by commissioner, §81-27-8.114.
    Destruction of books and records of liquidated company, §81-27-8.122.
    Directors acting to place business under control of commissioner, §81-27-8.102.
    Dividends, declaring and paying to shareholders or participants, §81-27-8.113.
      Unclaimed dividends held in trust, §81-27-8.116.
    Effective date of taking possession, §81-27-8.103.
    Enjoining further action of commissioner, §81-27-8.106.
    Exclusive method of liquidation, §81-27-8.120.
    Expenses of commissioner incurred in liquidation, §81-27-8.119.
    Grounds for commissioner taking over, §81-27-8.101.
    Insolvency, trust terminated.
      New trustee appointed, §§81-27-8.123, 81-27-8.130.
    Inspection of inventory of assets and liabilities, §81-27-8.109.
    Inventory of assets and liabilities, §81-27-8.109.
    Liens, limitations, §81-27-8.104.
    Liquidating agents, employment by commissioner, §81-27-8.115.

TRUST COMPANIES —Cont'd
Limited liability trust companies —Cont'd
  Involuntary dissolution and liquidation —Cont'd
    List of companies taken over and liquidated.
      Report by commissioner, §81-27-8.118.
    List of companies under liquidation, report by commissioner, §81-27-8.131.
    Meeting of shareholders or participants after payment of claims against company.
      Authorizing agent to receive assets remaining, §81-27-8.117.
    Notice of taking possession, §81-27-8.103.
      Issuance to trust institution, §81-27-8.104.
    Order and preference in distributing assets, §81-27-8.113.
    Permission to resume business after commissioner takes possession, §81-27-8.105.
    Preference in distribution of assets, §81-27-8.113.
    Report by commissioner showing companies under liquidation, §81-27-8.131.
    Resumption of business by permission of commissioner, §81-27-8.105.
    Retention of books and records of liquidated company, time period, §81-27-8.122.
    Show cause by commissioner as to takeover, §81-27-8.106.
    Succession by commissioner to property of company, §81-27-8.107.
    Suspension of operations, deemed possession of commissioner, §81-27-8.102.
    Time for holding unclaimed dividends, §81-27-8.116.
    Transfer of remaining assets to authorized agent, §81-27-8.117.
    Trust terminated on insolvency, new trustee appointed, §§81-27-8.123 to 81-27-8.130.
    Unclaimed dividends, §81-27-8.116.
  Liability of participants and managers, §81-27-6.302.
  Management vested in participants, §81-27-6.304.
  Reduction of participant's contribution, §81-27-6.305.
  Transfer of participant's interest, §81-27-6.306.
  Withdrawal of participant's contribution, §81-27-6.305.
Limits on lending, §81-27-5.201.
Liquidation.
  Claims against dissolved companies, §§81-27-8.110 to 81-27-8.112.
  Involuntary dissolution and liquidation, §§81-27-8.101 to 81-27-8.131.
  Selling state trust company, §81-27-6.406.
  Voluntary dissolution and liquidation, §§81-27-8.001 to 81-27-8.006.
Loan limits, §81-27-5.201.
Managers, §81-27-6.203.
Managing participants, §81-27-6.203.
Merger, §81-27-6.401.
  Application, §81-27-6.402.
  Approval by commissioner, §81-27-6.403.
  Articles of merger, §81-27-6.402.
  Dissenters' rights, §81-27-6.404.
  Implementation of plan of merger, §81-27-6.401.
  Out-of-state trust institutions, notice, §81-27-2.303.
Misapplication of corporate or fiduciary funds.
  Report of apparent crime, §81-27-6.211.
Mortgages.
  Investments in mortgage related securities, §81-27-5.101.
Multistate trust institutions act, §81-27-1.001.
Mutual funds.
  Investments in, §81-27-5.104.
Names, §81-27-1.105.
Notice of desire to engage in trust activities, §81-27-4.103.
Notice of desire to establish office, §81-27-2.004.
Number of persons who may organize and charter state trust company, §81-27-4.101.
Officers, §81-27-6.205.

TRUST COMPANIES —Cont'd

Offices generally for conducting trust business, §81-27-2.002.

Out-of-state trust institutions.
- Acquiring interstate trust office, §81-27-2.103.
- Enforcement actions by commissioner, §81-27-2.302.
- Engaging in trust business, §81-27-1.104.
- Establishing interstate trust office, §81-27-2.102.
  - Additional trust offices, §81-27-2.106.
  - Approval, §81-27-2.105.
  - Notice, §81-27-2.104.
- Examination of offices established and maintained, §81-27-2.301.
- Fees, §81-27-2.301.
- Joint examination or joint enforcement actions with other bank supervisory agencies, §81-27-2.301.
- Merger, consolidation or other transaction changing control, notice, §81-27-2.303.
- Operating in violation of provisions, §81-27-2.302.
- Reports regarding institution, §81-27-2.301.
- Representative trust office business, §81-27-2.201.
  - Registration, §81-27-2.202.
- Unauthorized trust activity, §81-27-2.302.
- Unsafe and unsound manner, §81-27-2.302.

Out-of-state trust offices, §81-27-2.005.

Owning or operating business.
- Investment of funds in, §81-27-5.105.

Pledging or creating lien on assets prohibited, §81-27-5.402.

Principal executive officer, §81-27-6.205.

Principal office, §81-27-2.003.

Private trust companies.
- Application requesting exemption from chapter, §81-27-4.302.
- Conversion to public trust company, §81-27-4.303.
- Exemption, investigation and examination, §81-27-4.301.
- Relationship of individuals controlling company, §81-27-4.301.

TRUST COMPANIES —Cont'd

Private trust companies —Cont'd
- Requirements for maintaining status as private trust company, §81-27-4.302.
- Requirements to transact business, §81-27-4.301.
- Revocation of exemption, §81-27-4.302.

Purchase of assets of another trust institution, §81-27-3.401.

Purchasing asset in which officer, director, manager, etc., interested, §81-27-6.207.

Purchasing trust institution acting as disbursing agent.
- Disbursal of purchase price and additional funds delivered by selling institution, §81-27-6.405.

Real estate, acquiring, §81-27-5.002.

Reasonable compensation for services.
- Compensation arrangement between client and person acting as trustee or other fiduciary, §81-27-3.301.

Records, §81-27-6.209.
- Criminal offenses relating to books and records, §81-27-6.206.

Reducing outstanding capital, approval required, §81-27-4.203.

Registration.
- Activities not requiring, §81-27-1.102.

Religious denomination, church, synagogue.
- Acting as trustee by.
  - Charter, license, registration not required, §81-27-1.102.

Removal of directors, officers and employees, §81-27-7.104.

Removing, destroying or concealing book or record, §81-27-6.206.

Rental payments received in lease financing transaction.
- Considered rent and not interest or compensation, §81-27-5.202.

Reports.
- Apparent crime, §81-27-6.211.
- Involuntary dissolution and liquidation.
  - List of companies taken over and liquidated, §81-27-8.118.
  - List of companies under liquidation, §81-27-8.131.
- Out-of-state trust institutions, §81-27-2.301.
- Voluntary dissolution and liquidation, §81-27-8.004.

TRUST COMPANIES —Cont'd
Representative trust offices, §81-27-2.004.
  Out-of-state trust institutions engaging in trust business, §81-27-2.201.
    Registration, §81-27-2.202.
Required capital, §81-27-4.106.
Restatement of articles of association, §81-27-4.201.
Robberies.
  Report of being victim of apparent robbery, §81-27-6.211.
Rules and regulations, §81-27-1.003.
Sale of assets.
  All or substantially all of assets, §81-27-6.408.
  Board approval, §81-27-6.408.
  Liquidation of selling state trust company, §81-27-6.406.
  Payments to creditors of selling institution, §81-27-6.407.
  Purchasing trust company acting as disbursing agent, §81-27-6.405.
Sale or transfer of property of liquidated company to another trust institution, §81-27-8.006.
Securities, investments in, §81-27-5.101.
Security transactions.
  Activities not requiring charter, license or registration, §81-27-1.102.
Seizure of business and property by commissioner.
  Involuntary dissolution and liquidation, §§81-27-8.101 to 81-27-8.131.
Selling asset to officer, director, manager, etc., §81-27-6.207.
Series of shares or participating shares.
  Establishing, §81-27-4.202.
Service of process.
  Executive officer at principal office. Agent for service, §81-27-2.003.
Severability of provisions, §81-27-1.004.
Shares.
  Acquisition of own shares or participation shares, §81-27-5.102.
  Conversion of capital notes or debentures into shares, §81-27-4.204.
  Establishing series of shares or participating shares, §81-27-4.202.

TRUST COMPANIES —Cont'd
Small loans, §81-5-79.
State trust companies.
  Amendment or restatement, §81-27-4.201.
State trust institution acting as fiduciary, §81-27-1.103.
State trust institution charter modernization act, §81-27-3.001.
Subpoena power of commissioner, §81-27-7.103.
Subsidiaries.
  Acquiring or establishing, §81-27-5.103.
Supervision by commissioner, §81-27-7.001.
Supervision by department, §81-3-3.
Takeover by commissioner of business and property, §§81-27-8.101 to 81-27-8.131.
Transacting business with management and affiliates, §81-27-6.207.
Trust business.
  Branch or trust office, §81-27-2.101.
  Generally, §81-27-2.001.
Trust deposits, §81-27-5.301.
  Lending, §81-27-5.201.
Trustee delegating investment, management or administrative functions to institution, §81-27-3.201.
  Hiring and compensating affiliate, §81-27-3.302.
Trust offices, §81-27-2.004.
  Business at trust office, §81-27-2.101.
  Interstate trust offices, §81-27-2.102.
    Acquisition by out-of-state trust institutions, §81-27-2.103.
    Approval of establishment by out-of-state trust institution, §81-27-2.105.
    Establishment of additional trust offices, §81-27-2.106.
    Notice required, §81-27-2.104.
  Out-of-state offices, §81-27-2.005.
  Representative trust office business.
    Out-of-state trust institutions engaging in trust business at office, §81-27-2.201.
      Registration of office, §81-27-2.202.
Unauthorized trust activity prohibited, §81-27-1.101.
Unclaimed property remaining in hands of liquidated trust company, §81-27-8.005.

TRUST COMPANIES —Cont'd
Unsound or unsafe condition.
  Involuntary dissolution and liquidation, §§81-27-8.101 to 81-27-8.131.
Voluntary dissolution and liquidation, §§81-27-8.001 to 81-27-8.006.
Vote by shareholders or participants to liquidate, §§81-27-8.001, 81-27-8.002.
Voting securities held by state trust company, §81-27-6.201.
  Acquiring control of state trust company through change in legal or beneficial interest, §§81-27-6.101 to 81-27-6.106.
Withdrawal of deposits.
  Rules and regulations promulgated by commissioner, §81-5-1.

TRUSTS AND TRUSTEES.
Accounts and accounting.
  Banks accepting accounts of fiduciary, §81-5-34.
Banks acting in fiduciary capacity as trustee.
  Registering securities held in name of banks nominee, §81-5-39.
Banks and financial institutions.
  Accepting accounts of trustees and fiduciaries, §81-5-34.
  Acting in fiduciary capacity as trustee.
    Bond or other security for faithful performance, §81-5-35.
    Out-of-state banking and trust associations and corporations, §81-5-43.
    Registering securities held in name of banks nominee, §81-5-39.
  Dealings with trustees.
    Not obligated to inquire as to lack of or limitation upon power, §81-5-53.
  Powers in regard to trust, §81-5-33.
  Trust companies, §§81-27-1.001 to 81-27-8.131.
Credit unions.
  Shares issued and deposits received in name of trust, §81-13-37.
Limited liability trust companies, §§81-27-6.301 to 81-27-6.310.
Savings accounts at savings institutions.
  Association accepting account in name of trustee, §§81-12-117, 81-12-139, 81-14-361.

TRUSTS AND TRUSTEES —Cont'd
Savings banks.
  Acceptance of accounts in name of trustee, powers of trustee, §81-14-361.
Trust companies, generally, §§81-27-1.001 to 81-27-8.131.

U

UNCLAIMED PROPERTY.
Trust company voluntarily liquidated by shareholders or participants.
  Unclaimed property remaining in hands of liquidated company, disposition, §81-27-8.005.

UNFAIR TRADE PRACTICES.
Debt management services, §81-22-23.
Department of banking and consumer finance.
  Notice of charges, cease and desist orders, §81-1-119.
False advertising.
  Savings bank business, §81-14-173.
Savings associations.
  Notice of charges, hearing, §81-12-211.

UNIFORM COMMON TRUST FUND LAW.
Bank or trust fund qualified to act as fiduciary.
  Establishment of common trust fund, §81-5-37.

UNSOUND BANKING PRACTICES.
International banking.
  Takeover by commissioner, §81-25-171.
Interstate bank branching.
  Enforcement actions by commissioner, §81-23-19.
Notice of charges, cease and desist orders, §81-1-119.
Savings associations.
  Notice of charges, hearing, §81-12-211.
  Supervisory control by commissioner, §81-12-217.
Savings banks.
  Removal of directors, officers and employees, §81-14-209.
  Supervisory control by commissioner, §81-14-207.
  Takeover by commissioner, §81-14-211.
Supervisory control by commissioner of banking and consumer finance, §81-1-125.

UNSOUND BANKING PRACTICES —Cont'd
Trust companies.
  Involuntary dissolution and liquidation, §§81-27-8.101 to 81-27-8.131.

USURY.
Late payment charges by savings association.
  Not considered interest under usury law, §81-12-167.

V

VENUE.
Savings associations.
  Appeal from final decision of commissioner or state board of banking review, §81-12-205.

VOTING TRUSTS.
Banking corporations, §81-5-31.

W

WAREHOUSES AND WAREHOUSEMEN.
Agricultural credit corporations.
  Acquiring, purchasing, owning or leasing and controlling, §81-15-25.
  Contracting with, §81-15-27.

WARRANTY DEEDS.
Sale of assets of insolvent bank.
  Special warranty deed, §81-9-11.